The Solicitors' Journal

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Current Topics.

Judicial Honours.

In the list of those whom the King has delighted to honour on the advent of the New Year, lawyers will have noted with satisfaction the names of those familiar in the profession who have been the recipients of titles. First among these is he whom we have known first as Mr. Justice, and then as Lord Justice, Greer, whose services to the nation in those capacities have been many and valuable. No kindlier gentleman than he has ever sat upon the bench, and all will rejoice at the honour that has now come to him, an honour which will enable him, if so minded, and if his health permits, to lend occasional assistance in the House of Lords. Of the others, interesting from the legal point of view, are Mr. E. A. Jelf, the Senior Master of the Supreme Court and King's Remembrancer, and Mr. Gerald Dodson, the Recorder of London, each of whom has received a knighthood. Sir Ernest Jelf, as we must now call the first of these, is a very learned lawyer, and the author of a number of excellent works, amongst the most interesting and useful of which is his "Where to find your Law," and, as is generally known, he is now editing the reissue of the "Encyclopædia of the Laws of England." Sir Gerald Dodson has also been a contributor to legal literature, having collaborated in the preparation of several volumes expository of the Road Traffic Acts.

Quarter Sessions Chairman.

The Administration of Justice (Miscellaneous Provisions) Act, 1938, which came into operation on 1st January of the present year, is well described by its title, belonging as it does to that class sometimes spoken of as "omnibus" statutes in view of the numerous and oftentimes curiously diverse subjects with which they deal. Firstly, the Act innovates on old usage by enabling courts of Quarter Sessions to apply to the Lord Chancellor for the appointment of a legally qualified person to act as chairman, and it is worthy of note that he may belong to either branch of the profession —if he is of ten years' standing and possesses such experience as in the opinion of the Lord Chancellor qualifies him for acting as such chairman. Acting upon the power conferred upon him by this statute the Lord Chancellor has lost no time in making appointments as chairmen and deputy chairmen of various courts of Quarter Sessions, and all will agree in recognising the eminent fitness of the various appointees, most of them being of tried distinction in the profession. The appointments are published at p. 19 of this issue. In the Act there is perhaps a touch of unconscious humour in the definition of those who are to be deemed as "legally qualified" when we find that it includes a "member of the Judicial Committee of the Privy Council, a judge of the Supreme Court, an Official Referee, a Railway and Canal Commissioner, a county court judge, the Attorney-General, the Solicitor-General, the Director of Public Prosecutions, and the recorder of any borough with a court of Quarter Sessions and a population of not less than 50,000." In England it has been symptomatic of the public spirit which animates men of social and professional rank that they have always been ready to place their services at the disposal of the nation, and time and again High Court judges have assisted in the work of Quarter Sessions when this was feasible. Among those of the past who did this was Lord Justice A. L. Smith, a great lawyer, if not a master of classical English, for was it not of him that his colleague Lord Justice Bowen said that there was a "distressing nudity about his language"? However that might be, the Lord Justice was zealous as a justice of the peace as well as a judge of the Supreme Court, and we are told that on one occasion, while taking part in the disposal of the work at Quarter Sessions, it was observed with much amusement that a newly fledged justice, unaware of his professional distinction, kept "coaching" him throughout the proceedings. If this new Act, which seeks to substitute legal for lay knowledge on the part of the chairmen, did nothing more it would have amply justified its existence; but it does more in the way of reform. Thus, it empowers the cancellation of assizes where there is no or little business; and it abolishes much of the formality in connection with proceedings on the Crown side relating to the writs of mandamus, prohibition, *certiorari* and *quo warranto*. In these various ways the Act is a very real contribution to the improvement of legal proceedings.

Concerning Exigents.

A further demonstration of the wide ambit of the Act just referred to will be found in its fourth schedule, which sets out a long list of statutes repealed either in whole or in part. The first of these is an Act of 18 Edw. III "concerning exigents," a description which probably conveys no very definite meaning to the majority of present-day lawyers. What were "exigents"? To answer this riddle we must go back to the older writers on English law. If we turn to Blackstone, who is always worth reading by reason of the excellence of his style as well as the light he throws upon our past legal history, we find that the exigent denoted a writ sued out when the defendant was not to be found, or after a

return of *non est inventus* to former writs; if the defendant did not appear he was outlawed by the coroners of the county. Apparently this procedure was fairly common in the old days, for there was an officer of court who bore the title "Exigenter," who had as one of his colleagues one bearing the equally grand title of "Filacer," who apparently was concerned with the filing of documents. In our more prosaic days we cannot boast of many such high-sounding titles borne by the officials of the Supreme Court.

The Bar Council: Annual Statement, 1938.

THE Annual General Meeting of the Bar is to be held in the Inner Temple Hall on the 18th of the present month. The principal matter of interest to members of the solicitors' branch of the profession in the Annual Statement for 1938 is, perhaps, the new series of Retainer Rules, which are set out at length. The new rules were issued on 31st March and readers will now be sufficiently familiar with them. It will be recalled that some five years ago the Bar Council and The Law Society decided that in some respects the rules issued in 1892 did not in many features conform to the requirements of present day-practice and a special committee was set up to revise the rules. It is pointed out that owing to the number of authorities to be consulted the project involved considerable time and exceptional difficulties. The new rules were prepared by the Bar Council and approved by the Attorney-General and The Law Society. Another matter of interest relates to Poor Persons' cases. The Council was asked to consider the hardship at present arising where a Poor Person's case is remitted from the High Court to a distant county court for trial. The rules only provide for counsel's withdrawal with leave of the county court judge which may often be difficult or inconvenient to obtain. It is stated that the Council approached The Law Society with a view to putting forward an alteration of the rules, and the Rule Committee of the High Court has been requested to make an alteration by striking out in Ord. XVI, r. 30 (3), the words "in the case of a solicitor," which will enable leave for withdrawal to be obtained either from the judge or from the Poor Persons Committee. The suggested modification of the rules has now been effected by the Rules of the Supreme Court (No. 2) 1938. Two points from the series of questions relating to professional conduct and practice may be selected for mention as of interest to solicitors. A barrister, who was asked by a professional client, who was a part time clerk of the justices, to advise him upon a question of jurisdiction, was informed that there was no objection to advising the clerk professionally in the circumstances. The Chief Justice of a Crown Colony in which the professions are fused, being anxious that barristers enrolled to practise as barristers and solicitors should have some experience of work in a solicitor's office, asked whether there was any objection to a member of the English Bar, who had no intention of practising at the English Bar, becoming immediately after call a student in a solicitor's office. The Council replied that it was not permissible for a member of the English Bar to be in a solicitor's office in England after being called. The Council reminds the profession that the Chairman is prepared, in conjunction with the President of The Law Society, to undertake the settlement of differences which may arise between members of the two branches of the profession. It is recalled that this method of settlement was originally adopted at the suggestion of The Law Society, and that it has on many occasions been of service to the parties.

The Adoption of Children (Regulation) Bill.

AMONG measures sponsored by private members which have secured the approval of the House of Commons in Second Reading is the Adoption of Children (Regulation) Bill. Miss HORSBRUGH, who moved the second reading, recalled that the Departmental Committee which was set up in 1935, and of which she was chairman, had been struck by the fact that anybody could set up an adoption society without licence or registration, and she urged that societies of this kind should be registered and controlled as were employment agencies and nursing homes. The Bill would make it an offence to arrange an adoption without registration, and also provided for the setting up of a case committee which would interview the adopters and visit their home. The Bill also places restrictions on sending children abroad. Mr. LLOYD, Parliamentary Under-Secretary, Home Office, said that while adoption in general worked well, there were two classes of abuse. One was the really unscrupulous agent at work. He could only be condemned as a sordid trafficker in juveniles' young lives. But the greater number of abuses were not so much due to callousness and greed as to the fact that the intermediary work was undertaken by organisations which had not the staff, machinery or funds to carry it out properly. They all wished Parliament to deal with the matter and protect the children. The same speaker urged that special care was requisite with reference to adoption by aliens, and noted that under the Bill adoption would not be possible by aliens resident abroad. He intimated that in the view of the Government the Bill was a very useful measure to deal with evils which concerned a particularly defenceless section of the community. As has already been indicated, the Bill was read a second time.

The Food and Drugs Act, 1938.

A CIRCULAR, No. 1755, has recently been sent from the Ministry of Health to local authorities—and, it may be of interest to note, to the Overseers of the Inner and Middle Temples—on the subject of the Food and Drugs Act, 1938, which comes into operation on 1st October, 1939. It is recalled that the Act, which received the Royal Assent last July, is based on a draft Bill (Cmd. 5629, H.M. Stationery Office, price 1s. 6d. net) prepared by the Local Government and Public Health Consolidation Committee, and that it represents a continuation of the work of that committee whose earlier activities formed the basis of the Local Government Act, 1933, and the Public Health Act, 1936. The Act consolidates, amends and in some respects simplifies the law relating to food and drugs (including milk and dairies), slaughter-houses and local authorities' market undertakings; renders of general application certain powers which have been found advantageous but have hitherto only been obtained by individual authorities; and contains a number of miscellaneous provisions. The circular provides a useful record of the chief changes effected by the Act though, as is indicated, the process of consolidating enactments dating back to the sixteenth century has necessitated a large number of minor amendments—and the Minister of Health does not propose to issue a detailed explanatory memorandum. Most of the substantial amendments are fully dealt with in the Third Interim Report of the Local Government and Public Health Consolidation Committee (Cmd. 5628, H.M. Stationery Office, price 1s. net), and it is suggested that the new Act should be studied in the light of the report—a table showing the clauses of the draft Bill which correspond to the sections of the Act being provided in the circular for the purpose.

Food and Drugs Authorities.

IT is impossible within the space available to indicate further the nature of the contents of the circular except to draw attention to one matter of some urgency. This relates to the authorities which according to the Act will become "food and drugs" authorities on 1st October next, and to the applications which the new provisions will in certain cases render necessary or desirable. The county council will be the authority for rural districts, and non-county

boroughs and urban districts with a population of less than 20 000 according to the 1931 census. At the other end of the scale the borough council will be the authority in county boroughs and non-county boroughs where the council is now the food and drugs authority and the population was 40,000 or more. The applications just referred to concern the two intervening classes. The first relates to non-county boroughs where the council is not at present the food and drugs authority and urban districts, having in either case a population of 40,000 or more. In these cases the borough or district council will be the authority unless, in pursuance of proviso (*a*) to s. 64 of the Act, the Minister of Health, on application of the county council in certain circumstances, directs that the county council shall retain the functions. The second intervening class comprises non-county boroughs and urban districts with a population of not less than 20,000 or more than 40,000; and in these cases the county council will be the food and drugs authority unless the Minister in pursuance of proviso (*b*) to the section aforesaid, on application of a local authority falling within the class in question, directs that such authority shall exercise the functions. In all cases the population is determined with reference to the figures of the 1931 census for the area as now constituted. The circular contains the request that applications under proviso (*a*)—which should be accompanied by a map of the area of the county showing the area which the county council would, in the absence of a direction under the section, be the food and drugs authority, and the area in respect of which the application is made—should be sent as soon as possible, and in any case not later than 1st March, 1939. An applicant council under proviso (*b*) should cause to be published in newspapers circulating in the area a notice that an application has been made and that representations by interested bodies or persons should be sent to the Minister within fourteen days, while evidence of publication should be submitted to the Minister. Notice of the application should also be sent to the other authority or authorities concerned which should inform the Minister as soon as possible if it is desired to submit observations. Applications under proviso (*b*) should also be made not later than 1st March, 1939. The circular is published by H.M. Stationery Office, price 2d. net.

National Health Insurance: Minister's Decisions.

A SUPPLEMENT, No. XIV, to the volume (Memo. 151, September, 1931) of Memoranda of Decisions given by the Minister of Health as to liability to insurance under the National Insurance Acts, has recently been published by H.M. Stationery Office (price 2d. net). One decision relates to a clerk who was articled to a firm of solicitors for a period of three years. The articles contained no provision for the repayment of the premium, except in the event of the death of the clerk or the solicitor, or cessation of practice. There was no provision for payments to the clerk in the nature of salary or otherwise though in practice a voluntary payment of £1 a week was regularly made, except when the clerk was absent on holiday or on account of sickness. The clerk's mother covenanted in the articles to provide him with board, lodging, clothing and medical attention. In these circumstances the Minister decided that the arrangement amounted to employment under a contract of apprenticeship with money payment and was employment within the meaning of the Insurance Act. Other cases decided concerning which an affirmative conclusion was reached included such diverse occupations as those of a curator of a museum, a seller of periodicals, and a golf caddie. On the other hand, employment as a life-boat mechanic for a weekly wage and the regulation rates of pay for services or exercises in the life-boat—the duties involving a daily occupation of from one to two hours in winter and a weekly occupation of a similar period in summer—was considered to involve part time service only as a member of the crew of a life-boat, and accordingly, by virtue of the special order made under the 1st Sched. to the Act, Pt. II, para. (*m*), was not employment within the meaning of the Act. A similar conclusion was reached in regard to fencers or persons engaging to erect fencing at a price per rod with material supplied by the employing company, though their assistants were considered to be employed within the meaning of the Act. The supplement also records a decision to the effect that the occupation of a man as street trader in association with a fruit merchant was not employment in respect of which contributions were payable under the Contributory Pensions Act.

Rules and Orders: Supreme Court.

THE attention of readers is drawn to three sets of rules which have recently been made by the Rule Committee of the Supreme Court. These are the Rules of the Supreme Court (No. 2), 1938, effecting a number of drafting amendments which need not be particularised here, the Rules of the Supreme Court (Criminal Proceedings), 1938, and the Rules of the Supreme Court (Divisional Courts), 1938. The changes effected by the last two sets of rules are largely dictated by the Administration of Justice (Miscellaneous Provisions) Act, 1938. Among matters dealt with by those relating to criminal proceedings are applications for trial of indictments at bar, change of venue of indictments, etc., under s. 11 of the Act, appeals against refusal of justices under s. 11 of the Criminal Justice Act, 1925, and indictments, informations and inquisitions tried in the King's Bench Division. The third set of rules above referred to provides for the substitution of a new Ord. LIX of the Rules of the Supreme Court for that previously existing, and, *inter alia*, prescribes the procedure in applications for the orders of *mandamus*, prohibition and *certiorari* which have been substituted for the former writs of the same name. These rules deal also with the procedure in connection with applications for an order under s. 9 of the Act which abolished informations in the nature of *quo warranto* and effect a number of further changes which cannot be indicated here. All the foregoing rules came into operation on 1st January, 1939. Attention may also be drawn to the Supreme Court Fees (Amendment) Order, 1938, which is set out on p. 18 of the present issue.

Local Government Superannuation.

IN exercise of powers conferred by s. 9 of the Local Government Superannuation Act, 1937, the Minister of Health has recently made the Local Government Superannuation (Surrender of Superannuation Allowance) Rules, 1938, which prescribe the conditions under which a married employee may surrender a part of the superannuation allowance to which he is entitled under s. 5 (1) (*a*) or (*c*) of the Act in order to secure the payment of a pension to a surviving spouse. Tables from which the amount of the annual pension payable to the surviving spouse can be calculated have been prepared by the Government actuary, and copies of the figures relating to retiring ages from 60 to 65 in the case of a man and 55 to 65 in the case of a woman have been sent to local authorities concerned with an explanatory circular (No. 1758 S/14). The rules prescribe limits to the part of the superannuation allowance which an employee may surrender, and the circular suggests that, in order to assist him in submitting to the authority a notification within the prescribed limits, in forwarding to him a copy of the rules and tables an offer should be made to inform him of the maximum and minimum amounts within which he may make a surrender if he notifies the authority of the age of the spouse. The rules apply only to contributory employees under the Local Government Act, 1937, and do not therefore concern any person in the employment of a local authority who retires before 1st April, 1939. The rules are published by H.M. Stationery Office at 2d. net; the circular and tables at 1d. each, net.

Criminal Law and Practice.

HOMICIDE AND PROVOCATION.

THE interesting defence of provocation was recently raised in a murder trial at the Central Criminal Court (*R.* v. *Clements*, *The Times*, 13th December, 1938). The accused was charged with murdering his wife after hearing her say, while she was half asleep, "Have you put the kettle on, Felix?" The name of the prisoner was not Felix, and it appeared that a man named Felix had actually admitted to the police that he had committed adultery with the prisoner's wife. The prisoner said that he had not been certain before his wife's remark whether she had committed adultery, but on hearing it he decided that she had committed adultery, and he lost control of himself and committed the offence with which he was charged. The jury found him guilty and added a very strong recommendation to mercy "as the prisoner acted under great provocation."

Provocation, though often urged in mitigation of a homicide, is of course never a defence, except in so far as it may reduce the charge of murder to one of manslaughter. The test to be applied in such cases was laid down in *R.* v. *Welsh*, 11 Cox 336, 338, and approved by Lord Reading, C.J., in *R.* v. *Lesbini* [1914] 3 K.B. 1116, 1120: "There must exist such an amount of provocation as would be excited by the circumstances in the mind of a reasonable man, and so as to lead the jury to ascribe the act to the influence of that passion."

Baron Parke made a clear statement on the law of provocation in relation to a discovery of adultery in *R.* v. *Pearson* (1835), 2 Lew C.C. 216, where he said that if a man kill his wife or the adulterer in the act of adultery, it is manslaughter and not murder, provided the husband has ocular inspection of the act, and only then. With regard to suspicion of adultery the law was stated by Rolfe, B., in *R.* v. *Kelly*, 2 Car. & Kir. 814, 815, where he said "I state it to you without the least fear or doubt, that to take away the life of a woman, even your own wife, because you suspect that she had been engaged in some illicit intrigue, would be murder; however strongly you may suspect it, it would most unquestionably be murder."

It quite clearly follows, therefore, that a strong suspicion of adultery will be of no avail as a defence even in cases where the adultery has actually taken place. The bounds between a strong suspicion and a sudden realisation amounting to actual knowledge are in some cases exceedingly hard to define, and it is in cases like these that hardships may occasionally arise if the law is strictly interpreted. On the other hand, it would, in most cases, be undesirable that proof of sudden knowledge of adultery, other than "ocular inspection," should reduce the charge of murder to one of manslaughter.

FAILING TO REPORT AN ACCIDENT.

ON 12th September, 1938, an interesting question was raised at Clitheroe Petty Sessions on the construction of s. 22 of the Road Traffic Act, 1930 (*R.* v. *Mayo*). This well-known section provides that if, owing to the presence of a motor vehicle on a road, an accident occurs whereby damage or injury is caused to any person, vehicle or animal, the driver must stop and if so required by any person having reasonable grounds for so requiring, give his name and address and the name and address of the owner and the identification marks of the vehicle. If he does not do so he must report the accident at a police station or to a constable as soon as reasonably practicable, and in any case within twenty-four hours. Under s. 113 the maximum penalty for a first offence is a fine of £20, for a second offence three months' imprisonment or a fine of £50.

The defendant pleaded not guilty, and it was proved that the defendant's car skidded at a corner and hit a stone wall, damaging both the wall and the car. It was also proved that he did not give his name or address to any person nor did he report the accident as required by s. 22 of the Road Traffic Act, 1930. It was urged by the prosecution that damage had been caused to the owner of the wall by reason of the accident and on behalf of the defendant it was argued that damage to the wall was not damage or injury to any person, vehicle or animal, within the meaning of s. 22. The justices upheld the defendant's contention and dismissed the information.

It is, of course, inadmissible to refer to a Parliamentary debate in considering the construction of an Act of Parliament, but it is interesting to note that when the 1930 Act was before Parliament in the form of the Road Traffic Bill, the Solicitor-General opposed an amendment to cl. 22 which would have expressly included damage or injury "to any other property on the road or on the land adjoining the road." He said that it would be overloading the Bill to include those words and added that the Legislature should be reluctant to create criminal offences the commission of which would be considered very lightly.

Although no regard may be paid to Parliamentary debates in this connection, it is seriously arguable that the proposed amendment was unnecessary, and that the Solicitor-General's objection to making the failure to report this kind of accident an offence is overruled by words in the section to which he did not at the time object. Those words are: "owing to the presence of a motor vehicle on a road, an accident occurs whereby damage or injury is caused to any person, vehicle or animal."

The obvious case which this section was meant to include and does include is that of a collision between two motor vehicles in which damage is inflicted on one or both of them. Is it to be said that because such an accident does not result in personal injuries and only damages the vehicle of the person charged with failing to report the accident, this is not damage to any vehicle within the meaning of the section? The word "any" has a naturally unrestricted meaning, and if a vehicle collides with a brick wall causing damage to itself (as it most probably will) failure to report such an accident must, it is submitted, clearly be within the section.

It is possible indeed to go further and argue that damage to a brick wall is damage to a person (i.e. the owner of the wall) within the meaning of the section. This contention is strengthened by the fact that the word "injury" is used as an express alternative to "damage." Furthermore, statements of claim, which must be framed in the clearest possible language, invariably state that "the plaintiff has suffered damage" even when no damages for personal injuries are claimed. (For decisions in petty sessions, see 96 J.P. 336.)

It may be that as there is no limit to the minor accidents which may occur on the roads a strict interpretation of the section would place an intolerable burden on motorists. The Legislature appears, however, perhaps unintentionally, to have cast its net wide, and the courts have to consider in every case whether the maxim *de minimis non curat lex* applies so as to exonerate a defendant who fails to report a trivial accident on the road.

The point is one of considerable importance and interest to the motoring public and property owners, who will look forward to an authoritative pronouncement from a higher court.

It is announced by the Dominions Office that, on the invitation of the Secretary of State, Mr. Kenneth Swan, K.C., has agreed to act as chairman of the meetings of representatives of non-political Empire organisations which are held periodically in order to facilitate co-operation between these organisations. Mr. T. Hollis Walker, K.C., who was previously chairman of these meetings, recently found it necessary, for reasons of health, to resign the appointment, and the Secretary of State has accepted his resignation with regret.

New County Court Rules.

THE COUNTY COURT (No. 2) RULES, 1938.

THESE rules, in force since last September, and set forth in 82 SOL. J. 666, 667, introduce useful amendments (*inter alia*) in the case of an action against several defendants and in the matter of taxation of costs. Order V, r. 2, states that where there are several defendants judgment may be given against such one or more as may be found liable, without amendment. A new rule 3 is now added to this effect: where two or more defendants are sued, whether jointly or severally, the plaintiff may have judgment against one or more and may issue execution without prejudice to his right to proceed against another defendant.

For Ord. XV, r. 2, a new rule is substituted: where a person is ordered to be added or substituted as defendant (except under r. 11), the amended originating process shall be served on him, according to the rules of service of such process, and only on such service are the proceedings deemed to have begun against him. Forms 87 and 88 are revoked.

By the new r. 8 of Ord. XXVII: where money is paid into court by the garnishee and accepted by the judgment creditor, the registrar may, on the production of the judgment debtor's written consent, order the money to be paid out before the return day; in the absence of that consent, the judge may, on the return day, make such order as may be just. At the end of Form 210 (Notice to judgment debtors of payment into court by garnishee) a paragraph is added that if before the return day he sends the judgment creditor his written consent to the money being paid out, liability for costs may be reduced.

Order XLVII—concerning costs—is amended in important particulars.

Rule 21 (1) permits an increased fee for counsel, if the judge certifies at the trial the amount to be paid by the registrar. By sub-r. (2) the judge may certify a case—where the costs are on Scale B or C—as fit for two or more counsel. A new sub-r. (3), for the benefit of solicitors, is added: *Instructions for brief or conducting cause.* If, in any case, the judge is satisfied that the solicitor's charge for taking instructions for counsel's brief (whether action, or arbitration, or reference), or the solicitor's charge for conducting the case without counsel, ought not to be limited to the scale amount, and the judge certifies accordingly at the hearing, an increased fee will be allowed, viz., such amount as the registrar thinks reasonable. This sub-rule meets the criticisms of MacKinnon, L.J., in *Murray* v. *Redpath, Brown & Co.* (1937), 54 T.L.R. 155, 158; 81 SOL. J. 1040.

Rule 30 (1) deals with the fee of expert witnesses—a fee for attendance, and, if allowed, a qualifying fee. Sub-rule (2) prescribes the amount of the qualifying fee. Sub-rule (3) (introduced by the County Court Rules (No. 1), 1938), permits the judge or the registrar to allow a qualifying fee, even though the witness does not attend. By the new sub-r. (4) the registrar, if he thinks a report was reasonably necessary, may allow a fee of a guinea, where an expert witness, who is not entitled to a qualifying fee, has given a written report. The proviso is amended to give the judge power to increase this fee, if he thinks it inadequate.

Rule 41 permits a percentage increase where (under rr. 35 and 37) solicitors' charges are taxed or fixed and allowed on Scale B or C. Proviso (*a*) preserves the power to direct payment of a gross sum as between solicitor and client. Proviso (*b*) had stated that, unless the judge otherwise ordered, the percentage increase should not apply where costs were taxed under a certificate granted under r. 13 (where the question was of importance to a class, or involved a difficult question of law, or where the decision affected other parties). Proviso (*b*) is now revoked; no such limitation will apply.

Rule 42—*Review of Taxation*—is revoked and a more comprehensive rule substituted entitled *Objections to taxation and review.* The registrar may "reconsider" his own taxation; a dissatisfied party may subsequently apply to the judge for a review. By sub-r. (1) a dissatisfied party may, in the first instance, apply to the registrar to reconsider the taxation. By sub-r. (2) the application may be made on the day of taxation, and, if not so made, (*a*) shall be made on notice; (*b*) the notice shall be filed in the court office within two days of the taxation, *and unless ordered by the court shall operate as a stay of execution in respect of the costs until the application has been heard*; (*c*) the notice shall specify the items challenged *and the grounds and reasons for the objections.* By sub-r. (3) the registrar must reconsider the taxation, and *on the request of either party must state in writing the reasons for his decision on the objections.* Any party dissatisfied with the reconsideration may apply for a review to the judge (sub-r. (4)). The time for making this application is as in sub-r. (2). The judge may make such order as is just (sub-r. (6)); of course, within the framework of the Rules (see *per* Romer, L.J., in *Murray* v. *Redpath, Brown & Co.*, *supra*, at p. 157).

In the proviso to r. 16 of Ord. XLVIII (concerning security), that in lieu of a deposit of money or a bond the registrar may accept an undertaking by a solicitor "to pay the amount fixed if required," the latter words are omitted, and the undertaking will henceforth be "to pay any costs which the plaintiff may be ordered to pay to the defendant in the action."

Finally, at the end of item 65, Higher Scale of Costs, entitled "Letters in lieu of attendances which could properly be allowed under item 47 or item 63"—item 48 is substituted for item 63—the following words are added: "Where a letter is written in lieu of making an attendance which could be properly allowed under items 35, 36, 37, 39, 40, 41, 45, 51 or 63, the same charge may be allowed for the letter as could have been allowed for the attendance."

THE COUNTY COURT (No. 3) RULES, 1938.

These are found in full at 82 SOL. J. 1012–1014. They came into force on 14th December, 1938. Order VII, r. 7A, prescribes the form of particulars when the recovery of goods under a hire-purchase agreement is claimed. Applications under s. 12 (3) of the Hire-Purchase Act, 1938, may be heard either by the judge or by the registrar. Where the registrar has made a postponed order under s. 12 (4), he may also deal with any application under s. 13 (Ord. XLVI, r. 10). Five new forms are inserted after Form 139—now numbered 139 (1). They deal with judgment for delivery of goods under s. 12 (4) (*a*), (*b*), (*c*), and the order on application under s. 13.

Order XIII, r. 2, confers a useful jurisdiction upon the registrar—in the absence of any contrary provision in statute or rule—to hear any interlocutory application. Hitherto—as Table G in the "Annual County Courts Practice, 1938," p. 836, shows—a large number of interlocutory applications could only be dealt with by the judge. The rule concerning objection to trial in the county court will apply, with the necessary modifications, to a counterclaim (Ord. XVI, r. 18 (5)). Order XXIII is amended; rr. 1 and 2 are revoked and new rules are substituted. Rule 1 gives the registrar power, on the application of the parties and by leave of the judge, to hear any action where the amount involved is under £10. By r. 2, where the plaintiff does not appear, the proceedings shall be struck out, but may be reinstated. Sub-rule (3) is new; where the plaintiff does not appear, but the court has received an affidavit admissible in evidence, the case is not struck out, but he is deemed to have appeared and to have given the evidence in the affidavit. A similar provision is added to Ord. XXV, r. 46, as sub-r. (2), dealing with a judgment creditor upon the judgment summons. New rules relating to warrant of delivery are substituted for rr. 74 and 75 of Ord. XXV.

Company Law and Practice.

More about Companies Limited by Guarantee.

As we saw when last considering this type of company, there was now in the ordinary way no advantage to be gained in forming a company limited by guarantee and having a share capital, one reason therefor being that the capital of the company has to be stated in the memorandum and a reduction of capital can in such a case only be carried out in the same way as a reduction of capital in a company limited by shares. In the case of companies incorporated prior to the 1st January, 1901, the case is very different. In that case the capital is required only to be set out in the articles of association, and consequently the provision as to capital, like any other provision in the articles, may be varied from time to time as the company thinks fit. A resolution of the company in general meeting is all that is required to increase its capital, or even to reduce it in any way it desires.

Another important difference between companies limited by guarantee incorporated before and after the 1st January, 1901, concerns s. 21 of the present Act. That rather obscure section, it will be remembered, does two things: It prevents a company limited by guarantee and not having a share capital registered after that date to make provision for giving any person a right to participate in the divisible profits of the company otherwise than as a member; and it also provides that any resolution of such company purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is unspecified. We saw what the apparent effect of this section was when considering these companies a short time ago, but in the case of a company incorporated before the 1st January, 1901, no such restrictions apply. In *Mallison* v. *General Mineral Patents Syndicate* [1894] 3 Ch. 538, for example, it was held that the articles of a company limited by guarantee not having a capital divided into shares might provide for the division of the interests of the members in the undertaking of a company into transmissible shares. It is not easy to see what the exact effect of this decision (which is here stated from the headnote) to that case was, for in the course of his judgment North, J., makes the following observations: "I do not think they (i.e., the company) either mean to have a fixed capital, or to divide that fixed capital into any number of shares. They are attempting to do a thing, for some reason, which I do not thoroughly understand, and which I very much doubt whether they can successfully accomplish; they desire in some way, keeping themselves as a company limited by guarantee without a share capital, to express fractionally the interests in the company of the several members. What good it will do them I do not quite know; but that is a totally different thing from fixing the capital which is neither fixed nor proposed to be fixed." The effect would seem to be as I have suggested before, that the company would have shares of no nominal value, which is now apparently impliedly prohibited by subs. (2) of s. 21, but in any case whatever the effect of that sub-section, the practical effect is the same, for directions have been given by the Board of Trade which the Registrar of Companies acts upon, to the effect that he is not to accept the papers of a company limited by guarantee not having a share capital when it appears from the memorandum, the articles, or the nature of the company, that the members are to have distinct interests in the profits or the capital of the company.

The machinery of becoming a member of a company limited by guarantee and not having a share capital may be extremely informal and may be implied in doing some other act such as insuring with that company. In *Re Premier Underwriting Association Ltd.* (*No.* 2) [1913] 2 Ch. 81, it appears that membership of that company followed automatically on insuring with the company, for one of the articles provided that every person who insured in that association should, as from the date of the commencement of the insurance, be deemed to have become a member of the association; and similarly cesser of membership may be equally informal, for the same article went on to provide that every such person should be deemed to have ceased to be a member so soon as he shall no longer have any interest under insurance in the association. Where the articles make no such provision as this an agreement therefor is apparently sufficient to constitute a person a member and presumably notice in writing would be sufficient to terminate the membership unless there are provisions in the constitution of the company providing for the number of members to be kept at the same level, in which case any member intending to leave would as in the case of companies with a share capital have to find some one intending to become a member of the company.

In the case last referred to in addition to the provisions as to membership set out above there was a further provision that each member for the time being of the directors and the managers should *ex officio* be members of the association. The case is reported upon the question whether they were liable to be put upon the list of contributories although they personally had nothing insured in the association. It was a matter of considerable importance to them, for the amount which was stated in the memorandum in accordance with the Act which the members undertook to contribute in the event of liquidation was such amount as might be required not exceeding £5 in respect of each policy then in force. This provision had previously been held to mean £5 for every policy of insurance issued by the company and not for every policy in which the member was interested, and calls of £2,000 per member were accordingly made.

It was held by Neville, J., that the *ex officio* members were not liable for these calls and a thing which apparently weighed with him considerably in coming to this conclusion was that the articles also provided that the directors should not necessarily be members, other than *ex officio* members of the association. It was decided as a pure matter of construction, and the position of the *ex officio* members was not in any way elucidated by the judgment, for the learned judge after so deciding went on to say: "There were objects of membership apart from the question of insurance and contribution, because there was the voting power and the necessity of being a member . . . before you could be made a director . . . Whether or not it was possible for the articles to create this peculiar kind of membership I do not know. It may be that these provisions are entirely nugatory and if during the currency of the company the point had been raised I have no doubt difficult questions might have been involved; but I think it is impossible to say that because the association attempted by its articles to do what it was legally incapable of doing, it thereby involved the directors and managers in a liability which the articles do not profess to impose on them." It follows from this, that the more prudent way in which to achieve the result achieved in that case would be to steer clear of any reference to *ex officio* members and to impose no qualification on the directors so that there would be no need for them to be members of the company in any way.

As appears from the foregoing, one of the cases in which the company limited by guarantee and not having a share capital should prove the most convenient method of forming a company is in the case of club companies, for it can be provided that membership of the club shall involve without any further act membership of the company, and similarly in the case of retiring from membership. This will avoid the difficulties which that kind of company is liable to face from time to time when it is a company limited by shares from the shares getting into the hands of persons such as

executors or administrators who are not members of the club. On the other hand, it seems hard to conceive of any advantage in a company limited by guarantee and having a share capital over a company limited by shares.

A Conveyancer's Diary.

Incidence of Cost of Repair, etc., incurred by Trustees for Sale.

I HAVE written upon this subject before, but need make no apology for referring to it again. The alteration in the law which has, or at any rate from the authorities seems to have, been made in the law on the subject renders it of great importance.

Before 1926, the law regarding the burden of repairs as between a person entitled to the income of property for sale (who, for convenience, I will call the tenant for life) and the persons entitled to the capital after his death ("the remaindermen") was laid down in the well-known case of *Re Hotchkys* (1886), 32 Ch. D. 408. Cotton, L.J., said (at p. 418): "According to my view, as I have already expressed it, the burden of repairing, if it is necessary and proper, ought to be thrown upon the estate in such a way as not to throw it entirely upon the tenant for life or the remainderman."

On these principles the court would have interfered to see that there was an equitable adjustment.

By s. 28 (1) of the L.P.A., 1925, it is enacted that:—

> "Trustees for sale shall, in relation to land or manorial incidents, and to the proceeds of sale, have all the powers of a tenant for life and the trustees of a settlement under the Settled Land Act, 1925, including in relation to the land the powers of management conferred by that Act during a minority . . ."

The powers of a tenant for life with regard to "improvements" are to be found in s. 83 of the Act and in the 3rd Sched. But far wider powers are conferred by reference to the powers conferred by s. 102 upon trustees during a minority. The powers of trustees and their discretion as to whether the expense of repairs is to be borne out of capital or out of income appear to be unlimited. So far as the powers are concerned, it is sufficient to refer to sub-cl. (*b*) of sub-s. (2) of s. 102, which gives power to the trustees "to erect, pull down, rebuild and repair houses and other buildings and erections."

And as to the trustees' discretion to pay for such works out of income, sub-s. (3) provides that—

> "The trustees may from time to time out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management or in the exercise of any power conferred by this section or otherwise in relation to the land . . ."

It follows that trustees for sale may pull down houses and re-erect them, only, let us say, for the purpose of modernising buildings so as to make them more valuable for the remainderman and use the whole of the income for the purpose, and, as will appear from the authorities, the court has no power to interfere as it would have done before 1926. It may be that if the trustees were themselves interested as remaindermen, the court might, on general principles of equity, interfere to prevent the cost being thrown on the tenant for life, if rebuilding is not necessary, but is calculated to enhance the capital value of the property, but, except on some such ground, it appears there is no power in the court to intervene unless the trustees decline to exercise their discretion and surrender it to the court.

That appears to me to be an iniquitous state of things.

I need only refer shortly to the authorities.

In *Re Gray* [1927] 1 Ch. 242, Clauson, J., in effect held that the trustees had an absolute discretion to apply the whole income towards the payment of the costs of rebuilding or repairs which, before the Act, the court could have directed to be equitably adjusted as between capital and income on the principles laid down in *Re Hotchkys*. It is true that the learned judge to some extent modified that by some observations which he made in his judgment in *Re Conquest* [1929] 2 Ch. 353.

In both these cases, however, the trustees asked for the guidance of the court and surrendered their discretion to the court.

Re Robins [1928] 1 Ch. 722, was a case where a dangerous structure notice, had been served on the trustees by the local authority, and the trustees had temporarily paid for the necessary works out of income in their hands and applied to the court for directions as to how the expense should be borne as between capital and income.

Tomlin, J., decided that the cost should be borne out of corpus. It is, however, quite clear from the judgment that his lordship made that order only because the trustees had not exercised their discretion and had asked the court to decide the question.

Re Whittaker [1929] 1 Ch. 662, was another case of a dangerous structure notice, and the work necessary to comply with the notice involved pulling down, rebuilding and re-instatement of houses. That also was a case where the trustees submitted the question to the court without exercising any discretion and so it does not directly touch upon the point with which I am principally concerned. It will, however, be useful to quote from the judgment of Eve, J., on the principles to be applied.

With regard to the powers conferred on trustees for sale by reference to those conferred on a tenant for life under the S.L.A. and to the 3rd Sched. of that Act, his lordship said: "An examination of this schedule cannot but lend support to Clauson, J.'s view that the legislature intended so far as possible to establish something in the nature of a code in these matters. The trustee must first ascertain in which part of the schedule the improvement must be included: if in Pt. I, it will fall to be paid for wholly out of capital; if in Pt. III, it must ultimately be paid for out of income; and if in Pt. II, he, or if he prefers to refer the matter to the court, the court, must determine to what extent, if any, the cost is to be contributed to by income. I do not think it can be doubted that in determining an application of this last-mentioned nature the court would have jurisdiction to apply general equitable principles. Indeed, it is difficult to see what others could be resorted to in such circumstances."

I have two observations to make regarding that. First, that there was no need for the trustees to look at the schedule at all or to contemplate exercising the powers conferred by s. 83 and the schedule. They could have exercised their discretion under s. 102 to "erect, pull down, rebuild and repair houses." The schedule and the "code" have nothing to do with the powers conferred by that section. Secondly, there is no indication that the court has any jurisdiction to interfere unless the trustees surrender their discretion to it.

Re Smith [1930] 1 Ch. 88, was again a case of a dangerous structure notice. That does not carry us much further because Maugham, J., after stating the facts, said: "In the present case the question is submitted by the plaintiff and, in effect, the first defendant, for the assistance of the court in dealing with the repairs which have been mentioned. I am taking it to be a case in which the administrators have not exercised their discretion to pay the costs out of income, but are submitting to the court the question how they ought to be borne between the parties."

His lordship gave directions which are not material for my present purpose.

The result is that a person entitled to the income of property held upon trust for sale can look for no protection from the court if the whole of the income is expended upon "erecting, pulling down, rebuilding or repairing houses," although such works may be improvements, may be permanent and such as, before 1926, could have been directed to be paid for out of corpus.

Landlord and Tenant Notebook.

"Fine or Sum of Money in the Nature of a Fine."

THE Law of Property Act, 1925, s. 144, provides that in all leases containing a covenant, condition, etc., against assigning, underletting, etc., of the land or property leased without licence or consent, such covenant, condition, etc., shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that "no fine or sum of money in the nature of a fine" shall be payable for or in respect of such licence or consent; and the section concludes by saving the right to stipulate for and recover any "legal or other expense."

The history of the interpretation of this section, which was originally s. 3 of the Conveyancing Act, 1892, is short but curious. It is still not easy to say whether the words of the title of this article cover any material benefit to the licensing or consenting landlord.

The first decision was that in *Re Cosh's Contract* [1897] 1 Ch. 9, C.A. Mr. Cosh was a contractor, who in 1893 entered into an agreement for a building lease, under which he was to give "such security for the due performance of these conditions" as the lessors should require. The draft lease contained a covenant against alienation without previous written consent. Later in the year the lessors fixed the amount of the security and advised Mr. Cosh, and he made the deposit. Two years later he proposed to assign part of the property to a Mr. Finch, who was willing to undertake the relevant obligations. The lessors then demanded a further deposit as security for the performance of the rest of the contract. Mr. Cosh paid it under protest and took out a vendor and purchaser summons asking for a declaration that the lessors were not entitled to it and an order against them for repayment.

It was contended on his behalf that the object of the section was that the lessor should have no power to compel the lessee to purchase a licence, and that the lessors in this case received "a direct pecuniary benefit" from having the money in hand, which made the payment one in the nature of a fine.

The judgment of the Court of Appeal, which upheld that of Stirling, J., was delivered by Lord Russell of Killowen, C.J., and is both lucid and succinct. His lordship had observed, in the course of counsel's argument, that if the court could see that the object of the lessor was to obtain the pecuniary benefit, that would be *an* important consideration. But the judgment was that the section pointed at a sum of money which was to go irrevocably into the pocket of the lessor, and did not apply to a payment which did not transfer the title to the money.

Nothing was said about any *right* to recover the deposit paid under protest if it were a payment in the nature of a fine.

The question of "money's worth" was next discussed in *Waite* v. *Jennings*, *infra*, but an opportunity appears to have been missed when *Young* v. *Ashley Gardens Properties Ltd.* [1903] 2 Ch. 112, C.A., was contested. The lease in this case contained a covenant against alienation without consent, but there was a proviso that consent should not be unreasonably withheld (such as every such covenant is now deemed to contain, by virtue of L.T.A., 1927, s. 19 (1)). The landlords covenanted to pay existing and future rates, taxes, etc. When the plaintiff applied for a licence to assign, the defendants, his landlords, sent a document in duplicate for signature by him and the proposed assignee, by which they both agreed that the licence was granted on condition that if, in consequence of the assignment, the rateable value increased, they would pay on demand any future increase imposed in consequence of the assignment. (It is difficult to imagine how the assignment of a residential flat—of which the premises consisted—could cause an increase in its rateable value, unless the assignee effected alterations.)

The plaintiff never invoked the statutory enactment at all, but claimed a declaration that he was entitled to assign and damages for unreasonably withholding the licence. The latter claim was dropped. The condition stipulated for was held to be unreasonable, and in consequence the plaintiff was entitled to assign without any licence at all. It is a pity that no occasion arose for the Court of Appeal to say whether the additional burden, if any, was something in the nature of a fine.

In *Waite* v. *Jennings* [1906] 2 K.B. 11, C.A., the claim was for one quarter's rent; but a good deal depended on the result. The premises were a hotel let under a lease prohibiting alienation without written consent, not to be unreasonably withheld. There were successive assignments of the term, the defendant being the last assignee but one. He was party to the necessary licence, which was by deed, and in it he covenanted at all times during the residue of the term duly to pay the rent and observe all the covenants. At a later date he assigned (by consent) to someone else, who defaulted, and the landlord now sued on the covenant mentioned.

The attempt was made, on his behalf, to distinguish *Re Cosh's Contract*, *supra*, on the ground that in that case the assignor merely gave security for the performance of something he had already undertaken to perform.

But the decision yielded only *obiter dicta*, and conflicting *obiter dicta* at that, on the question under discussion. The reason being that the lords justices were unanimously of the opinion that assuming the entering into the covenant to be in the nature of a fine, yet there was no statutory prohibition of such a proceeding; it was not illegal to exact a fine, so that if it were by way of payment there could be no right to recover it, and if the covenant were a fine it was not avoided.

As to the *dicta:* Vaughan Williams, L.J., thought that a covenant to secure the rent, not being a covenant to pay any money over and above the rent reserved, was not in the nature of a fine. Stirling, L.J., that, "as at present advised," he shared this view. But Fletcher Moulton, L.J., took the larger view that the section forbade landlords to make the covenant against alienation a source of profit, and that the covenant entered into was an onerous condition on the defendant and a benefit to the plaintiff.

Andrew v. *Bridgman* [1908] 1 K.B. 596, is to all intents and purposes but an illustration of the law actually laid down in *Waite* v. *Jennings*, *supra*. An assignor was asked for and paid £45 for the necessary consent, and it was held that though when asked she could have ignored the request and assigned without further ado, she could not now recover the money. Fletcher Moulton, L.J., took the opportunity, however, of remarking that his opinion of the object of the section had not altered since *Waite* v. *Jennings*.

Now the dissenting opinions of Fletcher Moulton, L.J. are always worth studying. It appears that his lordship's opinion in this matter was based partly on the fact that "fine" was defined by a previous enactment, the Conveyancing Act, 1881, as including "premium or fore-gift and any payment, consideration, or benefit in the nature of a fine, premium or fore-gift" (by s. 2 (ix)). It would, of course, be in point to argue that the enacting provision of the 1881 Act which concern "fine"—s. 18 (6), which provides

that leases of mortgaged land shall reserve the best rent, but without any fine being taken—was made *alio intuitu* and the definition ought not to be applied to the later enactment dealing with licences to assign.

Be that as it may, the consolidating L.P.A., 1925, has had the effect of strengthening the position taken up by Fletcher Moulton, L.J. For the interpretation section of this statute repeats the definition of "fine" contained in the 1881 Act, in s. 205 (1) (xxiii); and s. 205 (1) applies to the whole Act, and should therefore govern the meaning of "fine" in both s. 99 (6) (which replaces s. 18 (6) of the 1881 Act) and s. 144, the enactment under discussion. This, apart from the fact that there is much to be said for the view that the spirit of s. 144 is inconsistent with the imposition of onerous covenants, would appear to re-open the whole question.

Our County Court Letter.

HIRE-PURCHASE OF MOTOR CAR.

In a recent case at Cheltenham County Court (*Bowmaker Limited* v. *Gibbs*) the claim was for £69 15s. as arrears due under a hire-purchase agreement. The plaintiffs' case was that the agreement was dated the 7th February, 1938, and the defendant thereby hired a new motor-car of the value of £149 10s. The first payment was £10 (which had been paid) and the balance was payable by twenty-four monthly instalments of £5 16s. 3d. each. No further payment was made, but the defendant had had the use of the car until the 26th April, when it was recovered by the plaintiffs. The amount claimed was half of the total sum of the rentals due and was for depreciation. The defendant's case was that he had only used the car for fourteen days, and had written to the plaintiffs suggesting the return of the car. The latter had subsequently been re-sold for £80. It was pointed out, for the plaintiffs, that the car had been involved in an accident and its speedometer reading showed 8,000 miles, so that it had been driven hard. The plaintiffs had incurred expenses and financial loss in respect of the car. His Honour Judge Kennedy, K.C., gave judgment for the plaintiffs for the amount claimed, with costs. It is to be noted that under the Hire-Purchase Act, 1938 (date of commencement the 1st January, 1939), the provisions of the Act apply (as stated in s. 1) in relation to all hire-purchase agreements under which the hire-purchase price does not exceed—where the agreement relates to a motor vehicle—the sum of £50. The transaction in the above case would therefore have been outside the Act, which is, moreover, not generally retrospective—even if the amounts involved are under the specified limits within which the Act operates.

INJURY TO CUSTOMER.

In *Pearce* v. *Utting*, recently heard at Lowestoft County Court, the claim was for £67 2s. as damages for negligence. The plaintiff was aged sixty-two, and his case was that on the 27th May, 1938, he was waiting for the omnibus in High Street, Lowestoft. Having a few minutes to spare, he entered the Jubilee Stores, the premises of the defendant, in order to have a drink. On putting his foot over the threshold, the plaintiff fell between the joists, into a hole left by the removal of the floor-boards. Having been helped out, the plaintiff ordered a glass of ale, thinking he was unhurt. It transpired, however, that he had a sprained ankle and fractured fibula. The defence was that the carpenter was putting down planks for customers to walk across, and the defendant and his father stood at the door to warn customers. The plaintiff, however, entered the premises with his head sideways, as he was looking along the street to make sure his omnibus was not in sight. Having his attention elsewhere, the plaintiff did not hear the warning, and the accident was due to his own negligence. The carpenter's evidence was that it was necessary to keep the door open, to enable him to relay the boards. His Honour Judge Rowlands held that adequate warning of the danger was not given, as the defendant and his father called out too late. Judgment was given for the plaintiff for £60 and costs. Compare *Lee* v. *Luper* (1937), 81 Sol. J. 15, in which a hotel guest, who wandered about in the dark, and was injured in a passage meant for the staff, was held unable to recover damages as an invitee.

DAMAGE TO SHOP BY RAINSTORM.

In a recent case at Harrogate County Court (*Mase* v. *Kidson and Another; England, Robinson & Co., Ltd., Third Parties*), the claim was for £85 1s. 8d. as damages for negligence. The plaintiff was a lingerie dealer, and her case was that, on the 30th June, 1938, there was a rainstorm, during which water in large quantities came through the ceiling into the shop window. Damage was thus caused to the plaintiff's goods, and her case was that this was due to an obstruction in the rain-pipe. The presence of this obstruction was a breach of the covenant to repair, entered into by the defendants as lessors of the shop. The defendants' case was that as a result of complaint by the plaintiff they had previously instructed the third parties, who were sanitary engineers, to repair a faulty rain-pipe. Having employed a first-class firm to investigate and remedy any defects, the defendants had fulfilled their covenant. His Honour Judge Stewart upheld this submission, and judgment was therefore given for the defendants, with costs. In the absence of evidence of negligence, judgment was given for the third parties against the plaintiff, with costs. Compare *Bishop* v. *Consolidated London Properties, Ltd.* (1933), 102 L.J.K.B. 257, in which the landlords were held liable for an obstruction caused by a dead pigeon. See also *Griffin* v. *Pillett* [1926] 1 K.B. 17, in which the repairs were not executed within a reasonable time after notice, and the landlords were held liable.

Obituary.

Mr. E. B. GRUNDY, K.C.

Mr. Eustace Beardoe Grundy, K.C., formerly of Adelaide, died in London on Saturday, 31st December, 1938, at the age of eighty-nine. Mr. Grundy was educated at Cheltenham College, and having served his articles at Manchester and Oxford, was admitted a solicitor in 1873. He went to South Australia in 1874, and practised as a barrister at Adelaide, taking silk in 1900. He became President of the South Australian Law Society in 1919.

Mr. C. A. STRAY.

Mr. Charles Ashton Stray, Town Clerk of Lowestoft since 1921, died at Lowestoft on Monday, 2nd January, at the age of fifty-four. Mr. Stray was called to the Bar by Gray's Inn in 1919.

Mr. T. W. CARTWRIGHT.

Mr. Thomas William Cartwright, solicitor, a member of the firm of Messrs. Freeth, Rawson & Cartwright, of Nottingham, died recently. Mr. Cartwright, who was admitted a solicitor in 1901, was Clerk to the Justices at Nottingham. He was Treasurer and Vice-President of the Notts Rugby Football Club.

Mr. T. E. KNOWLES.

Mr. Thomas Edward Knowles, solicitor, of Warrington, died at his home at Latchford Without, near Warrington, on 17th December, 1938, at the age of fifty-five. Mr. Knowles, who was admitted a solicitor in 1906, was secretary of the Warrington Law Society.

Practice Notes.

NO DISCOVERY OF IRRELEVANT DOCUMENTS.

In *Merchants' Insurance Co. Ltd.* v. *Davies* [1938] 1 K.B. 196; 81 Sol. J. 457 (82 Sol. J. 832, Practice Note on "Pleading Evidence"), the defendants asked for discovery of documents relating to policies which had been granted or refused by the company where disclosure of similar convictions had been made. Goddard, J., dismissed the application. On appeal, it was said that the practice of the company in dealing with such cases would be an issue at the trial, and that relevant evidence of that practice should be granted by sight of the documents before the trial. The Court of Appeal refused discovery. The mere fact that the company in cases where there had been similar convictions, which had been disclosed, did not decline the insurance, did not affect the case where no disclosure had been made. "Underwriters may well regard as material a fact which is concealed from them, and at the same time be prepared to disregard it if a frank disclosure is made" (at p. 208, *per* Sir Wilfrid Greene, M.R.). The facts sought to be disclosed by the discovery differed from the facts of the present case. The general ground upon which discovery is justified is that—

> "The documents sought are relevant in that they directly or indirectly enable the appellant to advance his own case or destroy that of his adversary, or may fairly lead him to a train of inquiry which may have either of these consequences," *per* Slesser, L.J. (at p. 210).

See also Ord. XXXI, r. 12, and r. 19*a* (3).

JUDGMENTS IN CONSULTATIVE CASES STATED FOR THE OPINION OF THE DIVISIONAL COURT.

During consideration of an appeal in a consultative case in the House of Lords on the 13th December, 1938, Lord Wright observed that their lordships in the case under appeal were sorry not to have the benefit of a reasoned judgment from the Divisional Court, or to be helped by the great experience of the judges of the King's Bench Division in those matters.

He (Lord Wright) understood that the practice had been adopted of answering the questions presented by a consultative case in an arbitration by a simple "yes" or "no," without detailed reasons. He thought that that was a comparatively recent practice, perhaps of about fifteen years' standing, adopted because, when there were three judgments, one from each of the judges in the Divisional Court, there was scope for differences of statement in the reasons, which was liable to lead to confusion and to further litigation. While he recognised the force of that view, he could not help observing that now, when an appeal from the Divisional Court had been given in these cases, subject to leave, a reasoned judgment of the Divisional Court was likely to be of great value. Not only was it certain to help the Appellate Court, but it might often prevent an appeal when a possible appellant had an opportunity of appreciating the weight of the reasoning on which the Divisional Court had proceeded. The difficulty which might well arise from there being more than one judgment might be obviated by the practice of having a single reasoned judgment which constituted the judgment of the court, a practice frequently adopted in the Court of Appeal and the Divisional Court, while in the House of Lords there was often a single speech in which the other learned lords concurred. It might be that the change in the law effected by the Arbitration Act, 1934, might afford a suitable occasion to make some such change. But he must not be taken to be suggesting to the Lord Chief Justice and the judges of the King's Bench Division what form their practice should take. He merely ventured on an observation which had occurred to him in considering the case before their lordships.

Lord Atkin, Lord Russell of Killowen, and Lord Porter were of the same opinion.

Reviews.

The Law of Hire-Purchase. By W. G. Earengey, a Judge of County Courts, one of His Majesty's Counsel, LL.D. Second edition. 1938. Demy 8vo. pp. xl and (with Index) 312. London: Stevens & Sons, Ltd. £1 1s. net.

A second edition of this excellent work has been rendered necessary by the passing of the Hire-Purchase Act, 1938, as well as by a number of important new decisions on the subject. It is an eminently practical text-book and contains a comprehensive account of the law, as well as an annotated text of the Act, and a precedent of a hire-purchase agreement which is outside the Act and one which is within the Act. The troublesome decision of the Court of Appeal in *Felston Tile Co.* v. *Winget* (1936), 3 All E.R. 473, is correctly stated in so far as it is said not to render all hire-purchase agreements agreements to buy within s. 9 of the Factors Act, 1889, or s. 25 (2) of the Sale of Goods Act, 1893. This is sufficiently obvious from the decision in *Helby* v. *Matthews* [1895] A.C. 471. It is doubtful, however, whether the learned author's proposition that the *Felston Case* decides that the conditions and warranties implied in every sale of goods by ss. 12 to 15 of the Sale of Goods Act, 1893, are also implied in every hire-purchase agreement, or that if it so decides, it is right, will command universal assent. It is respectfully submitted that an agreement to sell where the buyer is not bound to purchase is in reality only "an offer which cannot be withdrawn" (to quote from Lord Herschell's judgment in *Helby* v. *Matthews* (at p. 477 of [1895] A.C.), and "not in the sense of the law an agreement . . . to sell" (*ibid.*, per Lord Watson, at pp. 479, 480). It is submitted that the judgments in the *Felston Case* must be read in the light of the agreement under consideration, and that that agreement was in the *Lee* v. *Butler* form [1893] 2 Q.B. 318, that is to say, an agreement under which the hirer was bound eventually to purchase the goods and had no option to return them. Both traders and practitioners will find this book of the greatest assistance as a work of reference.

Principles of Mercantile Law. By J. Charlesworth, LL.D. (Lond.), of Lincoln's Inn, Barrister-at-Law. Fourth Edition, 1938. Demy 8vo. pp. xxxix (with Table of Cases) and (with Index) 386. London: Stevens & Sons, Ltd. 8s. 6d. net.

That this comparatively new work is now in its fourth edition is no slight indication of its value to students of mercantile law. Its style is readable and clear, and its division under headings render it highly useful for purposes of study. It can safely be predicted that it will continue to hold its own against its competitors in the same field.

Books Received.

Consideration in the Law of Simple Contract. By James Wicks, B.A., LL.B., of Christ Church, Oxford, and Gray's Inn. 1939. Demy 8vo. pp. xi and (with Index) 78. London: Stevens & Sons, Ltd. 5s. net.

The British Cabinet System, 1830–1938. By Arthur Berriedale Keith, D.C.L., LL.D., D.Litt., F.B.A., of the Inner Temple, Barrister-at-Law. 1939. Demy 8vo. pp. xi and (with Index) 648. London: Stevens & Sons, Ltd. 15s. net.

Income Tax: Tables of Tax on Net Income. 1938. London: H.M. Stationery Office. 10s. 6d. net.

Precedents of Claims in the County Court. By His Honour the late Judge Robert McCleary, County Court Judge of Circuit No. 12, and C. J. F. Atkinson, M.B.E., LL.B. (Lond.), Registrar of Keighley, Otley and Skipton County Courts. Second Edition, 1939. Demy 8vo. pp. xliii and 400 (Index, 53). London: Butterworth & Co. (Publishers) Ltd. 30s. net.

POINTS IN PRACTICE.

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Dangerous Structure.

Q. 3617. H owns a house in London controlled by the Rent Restrictions Acts. M, the tenant, holds on a quarterly tenancy. The borough council in whose district the house is situated have notified H that the house is a dangerous structure, and at the council's request H has shored up and supported the side of the building temporarily. The council now require executed extensive alterations including the rebuilding of an outside wall, and H's builders state before they can commence the work the house must be vacated. The necessity for this has been corroborated by the council. As the matter is urgent advice is sought—

(*a*) As to how possession of the house can be obtained (the tenant having adopted an arbitrary attitude).

(*b*) Does s. 16 (2) of the Rent Restrictions Act, 1920, apply in this case?

(*c*) Is a notice to quit necessary and must application be made to the county court for possession?

(*d*) Procedure generally.

A. It is assumed that the notification to H was given under the London Building Act, 1930, s. 132. In that event:—

(*a*) Possession of the house can be obtained by the removal of the inmates under s. 139 of the above Act.

(*b*) The quoted section, viz., s. 16 (2), does not apply.

(*c*) No notice to quit is necessary, but application for a removal order must be made to a petty sessional court.

(*d*) The procedure is by summons, issued on the application of the London County Council.

Special Removal.

Q. 3618. We are acting for the holder of a beer off-licence. The premises in which he carries on business are included in an area in respect of which a clearance order has been made under s. 26 of the Housing Act, 1936. A local inquiry was held and the order was confirmed. Our client desires to obtain other premises and to apply for a special removal of the licence to such other premises. Will you kindly let us have your view as to whether the justices have power to grant a special removal on the above facts. The complaint against our client's property was that it was unfit for human habitation. The point would appear to be whether it could successfully be argued that the premises are due to be pulled down under any Act for the improvement of highways or for any other public purpose. We can find no authority upon the point.

A. The justices have power to grant a special removal on the facts stated. See *Rowland* v. *Liverpool Licensing Justices*, noted in the "Justice of the Peace" for the 6th August, 1938, at p. 514.

Overcrowding.

Q. 3619. Can a tenant whose house is overcrowded leave his tenancy without giving notice to his landlord nor paying rent in lieu of notice, to move to a house provided by the local authority; the house not being subject to a slum clearance order nor in any way condemned, save as to the question of overcrowding? The provisions of ss. 8 and 9 of the Housing Act, 1935, and the Rent Restriction Acts are in mind.

A. The provisions of the Housing Act, 1935, ss. 8 and 9, have been superseded by the Housing Act, 1936, ss. 64 and 65. A right to possession is created by s. 65, in favour of the landlord, in the event of overcrowding. The latter may constitute an offence by the tenant, and, in order to save a continuous breach of the law by him, he is entitled to leave without notice and without paying rent in lieu of notice. The loss to the landlord in this respect is counter-balanced by the fact that he obtains vacant possession, which may result in the house becoming decontrolled.

Skin Disease.

Q. 3620. A is the manufacturer and vendor of a widely advertised hair restorer, which B purchased and used. Within a short time of commencing to use the preparation, B suffered an outbreak of a particularly stubborn skin disease which chiefly confined itself to his hands, although it did attack his scalp. A claim for damages was made on his behalf and A's advisers have now replied disclaiming liability but offering to make an *ex gratia* payment towards my client's expenses. It is stated by them that the results which occurred in my client's case are due to an idiosyncrasy on the part of my client in that he is hypersensitive to one of the ingredients used in the preparation. They also refer to cases in which persons suffer ill-effects through taking aspirin or strawberries and in which the vendor could not be held liable, and they suggest that A's position is similar. It is further stated that thousands of purchasers have used the preparation without ill-effect. Would you kindly state whether in your opinion A is liable, and if the decision in *McAllister* v. *Stevenson* [1932] A.C. has any bearing on the matter.

A. The bottle or wrapper probably contained cautionary notices, advising a skin test before using the hair restorer and disclaiming liability if the prescribed precautions were not observed. The case quoted is relevant, but liability is always dependent on negligence. If the bottle was sold in a similar state to thousands of others (and it appears difficult to prove the contrary) A is not liable. He is not an insurer against ill-effects from using his products, and it appears advisable to accept the *ex gratia* payment.

Administration Bond.

Q. 3621. Certain clients of ours are beneficiaries under an intestacy. There is some reason to suspect the *bona fides* of the administrator, and as a matter of precaution we have requested the solicitors acting for the administrator to supply us with the names and addresses of the sureties to the administration bond, but this information has been refused. Are the beneficiaries entitled to this information, and, if so, please refer us to the relevant authorities? If not, it seems to us, considerable difficulty will be experienced in cases of this kind should it be necessary to pursue the remedy under the bond.

A. Next-of-kin are entitled to apply for an order for justifying security, i.e., calling upon the sureties to make an affidavit that they are each solvent to the amount of half the penalty of the bond. The procedure is to enter a caveat and apply by summons to a registrar. It is a necessary preliminary that the names of the sureties should be known, and the beneficiaries are therefore entitled to the information. If this is refused, an application should be made to the court to revoke the grant of letters of administration.

To-day and Yesterday.

LEGAL CALENDAR.

2 JANUARY.—In the will of Serjeant Plowden, perhaps the greatest Elizabethan lawyer, dated the 2nd January, 1581, there is the following touching direction: "If I die in London my desire is that my body may be buried in the Temple Church where the body of my late loving wife Katherine Plowden lieth and that my body lie between her body and the wall on the north side in the chapel there where she is buried and I will that the tomb or other monument on the wall should declare that we both lie there buried."

3 JANUARY.—There was a horrible scene before the Debtors' Door at Newgate Gaol when Thomas White, a young bookseller, was hanged on the 3rd January, 1827, for burning down his house to get the insurance money. As soon as the clergyman had finished his discourse to him he made a violent effort, wrenched his pinioned arms free and pulled off the white execution cap. Amid the yells of the mob he was again bound, but just as the drop fell he freed his arms again and with a great leap gained a footing on the planks at the side. Thus clinging with both hands to the rope above his head he remained in a dreadful position till pulled down by main force after a convulsive struggle.

4 JANUARY.—On the 4th January, 1833, William Johnson, a labourer of Enfield Chase, was tried at the Old Bailey before Parke, J., for murder. On the fatal night he and several other men had been drinking at the "Crown and Horseshoes" with a relative of the local baker recently returned from India and far from short of ready money. Early next morning the body of the returned traveller was found in a ditch with the throat cut. A youth who had been concerned in the affair turned King's Evidence and laid the blame of the murder on Johnson, who was convicted and hanged, but in his dying confession declared that the witness had struck the first blow with his knife.

5 JANUARY.—Throughout Elizabethan and Stuart times the students of the Inns of Court were a troublesome and pugnacious band. In official records and private diaries there constantly appear entries like the following set down on the 5th January, 1693: "One Bastill, a young gentleman of the Temple, was committed to Newgate for wounding a captain at the Devil Tavern in Fleet Street on Saturday last."

6 JANUARY.—On the 6th January, 1930, Sir Montague Shearman died shortly after his resignation from the King's Bench Division.

7 JANUARY.—On the 7th January, 1779, there opened on board the "Britannia" in Portsmouth Harbour, the court-martial of Admiral Keppel, arising out of his conduct in an action against the French fleet commanded by the Comte d'Orvilliers. He was charged with the capital offences of going into the fight in an unofficer-like manner and scandalous haste in quitting it. The prosecution was conducted in person by Vice-Admiral Sir Hugh Palliser, a jealous subordinate, whose own conduct on the occasion had not been above reproach. In the end Keppel's innocence triumphed and the charges were found malicious and ill-founded. The rejoicing populace lit bonfires in his honour, burnt Palliser's house in Pall Mall and tore down the Admiralty gates.

8 JANUARY.—Edward Maurice Hill was born on the 8th January, 1862, the son of Sir George Hill, D.C.L., and the great-nephew of Rowland Hill, the postal reformer. In 1917 he became a judge of the Admiralty Division and during his period there he rendered service of international importance worthy of a successor of Lord Stowell. He always resented the linking of divorce work with the activities of his true vocation and hated sitting "with one foot in the sea and the other in a sewer."

THE WEEK'S PERSONALITY.

There is a strong tradition of athleticism on the English Bench, and in that tradition Mr. Justice Shearman stands very high as Swimmer of Niagara, hundred yards' amateur champion and Rugger Blue. He was a silk of eleven years standing when he was called to take his seat in the King's Bench Division. He was always a straightforward and sensible person, and he had no illusions as to any mystical transformation effected by the addition of the letters K.C. "I talk the same old rot," he said, "but I am listened to with greater respect." He never posed. He never courted publicity. He was well beloved of the Bar, though his fault lay in a tendency to indulge in judicial heckling of counsel appearing before him, a habit which sometimes resulted in his finding the long rather than the short cut to truth. Probably the two most sensational cases that fell to him as a judge were those of Harold Greenwood and of Bywaters and Mrs. Thompson, both of which raised considerable discussion. He was over seventy years old when he died. His retirement after fifteen years of judicial service had not repaired the ravages of ill-health which had forced him to resign. He was much lamented.

OVERWORK AT NOTTINGHAM.

At the last Nottingham Assizes Oliver, J., protested that he was allowed only three days in which to do three weeks' work, and a member of the Bar, speaking on behalf of the rest, said that the Midland Circuit was a very hard one, adding: "For many years judges have been unable to cope with the work. Some have even sat so late that they have been taken ill in consequence." He can hardly have been alluding to that historic occasion at Nottingham when Hawkins, J., sat on till twenty to one in the morning, for the judge seemed to suffer less inconvenience than anyone else concerned. A lively description of the scene has come down to us: "Jurors in waiting and attendants were asleep in all directions. He was the only one wide awake in court. Even javelin men fell asleep with their spears in their hands. The marshal dozed in his chair. Ushers leaned against the pillars which supported the gallery, while witnesses rubbed their eyes and yawned as they gave their evidence." All these people were kept in suspense because one butcher was alleged to have said of another that he had sold Australian mutton as Scotch beef.

A LATE SITTING.

At five o'clock the judge released the persons concerned in the remaining cases in the list, but warned them to be back punctually at seven. At that hour the Bar were to dine at the "George," so as they could not go to their meal they ordered their butler to bring it to them in the room of the second judge, who had already risen. Thus, while Hawkins sat on in the sweltering temperature on which he always insisted, sounds of revelry drifted in every time the door of the court was opened, as old circuit songs were shouted in the temporary mess-room. When he rose to take his tea at ten o'clock a row of champagne bottles stood in the corridor to greet him, but he resisted all allurements and was soon back in court. Midnight struck as the counsel in the third case down the list asked if the witnesses might go. "I don't know how long your lordship proposes to sit," he said, but was told to renew his application later. Meanwhile, the strains of "We won't go home till morning" drifted in from the merry-making Bar. It was twenty to one before the trumpets announced that the court had risen, as one wit put it, "until the day after yesterday."

Notes of Cases.

Judicial Committee of the Privy Council.

The Commissioner of Income Tax, Madras *v.* Diwan Bahadur S. L. Mathias.

Lord Atkin, Lord Macmillan, Lord Porter, Sir Lancelot Sanderson and Sir George Rankin.
18th November, 1938.

REVENUE—INCOME TAX—COFFEE GROWN OUTSIDE BRITISH INDIA—GREEN COFFEE CURED AND SOLD IN BRITISH INDIA—PROCEEDS RETAINED THERE—WHETHER INCOME ACCRUING WITHIN BRITISH INDIA—WHETHER EXEMPT FROM TAX—INDIAN INCOME TAX ACT (XI of 1922) s. 4.

Appeal from a judgment of the High Court, Madras, dated 29th April, 1937 (Beasley, C.J., Varadachariar and King, JJ.), on a reference to it under s. 66 of the Indian Income Tax Act, 1922.

The respondent assessee resided at Mangalore in British India and owned coffee estates in the State of Mysore, which is not part of British India. The income-tax officer at Mangalore assessed him to tax for 1934–35 on a "total income" of Rs. 29,160, of which Rs. 25,963 was computed as the assessee's profits of a "business" of growing, curing and selling coffee for profit. The assessee appealed to the assistant commissioner, disputing his liability in respect of any part of the sum of Rs. 25,963. His appeal was dismissed, and he required the commissioner to make a reference to the High Court. The agreed question having been decided by the High Court in favour of the assessee, the Commissioner of Income Tax, Madras, now appealed to His Majesty. The material facts as stated by the commissioner were as follows: The petitioner himself worked his estates for which he paid land tax to the Mysore State. He employed the necessary labour and maintained an office on the estate in order to supervise it. The labour was recruited mainly at Mangalore, and the materials required for the estate were purchased by the petitioner at Mangalore and sent to the estate. The crops, when harvested, were brought to Mangalore in their raw state. There was no ready market for raw coffee. The petitioner had the green coffee cured for payment at Mangalore by persons owning curing factories. It was then sold at Mangalore by the petitioner's agents, the proceeds being realised and retained there. A separate staff was maintained in Mangalore for the various operations conducted there. The accounts were written up by the estate staff in Mysore in respect of the expenses incurred in Mysore, and by the Mangalore staff in respect of the expenses incurred in Mangalore, and in respect of the receipts. All the operations connected with the cultivation of the coffee plants and the collection, transport and sale of produce were controlled by the petitioner from Mangalore. The result of the accounts in Mysore was incorporated in the books maintained at Mangalore, and a consolidated profit and loss account was made there." By s. 4 of the Indian Income Tax Act, 1922: "(1) . . . this Act shall apply to all income . . . as described or comprised in s. 6, from whatever source derived, accruing or arising, or received in British India. (2) Income . . . accruing or arising without British India to a person resident in British India shall, if . . . brought into British India, be deemed to have accrued or arisen in British India and to be income . . . of the year in which . . . so . . .brought . . . Provided further that nothing in this sub-section shall apply to income from agriculture arising or accruing in a State in India from land for which any annual payment in money or in kind is made to the State . . . (3) This Act shall not apply to the following classes of income . . (viii) Agricultural income." The assessee contended (i) that his income from coffee was not assessable as profits of a business; (ii) that it was within the second proviso to s. 4 (2); and (iii) that if any income was assessable under s. 4 (1) it was only the residue left out of the sale proceeds after deducting the market value of the green coffee and the curing and other charges. The High Court was of opinion that the income in question was "income from agriculture," and that it arose or accrued in Mysore.

Sir GEORGE RANKIN, giving the judgment of the Board, said that, in their lordships' opinion, the assessee was carrying on a "business" within the definition of the word in s. 2 (4), and within the meaning of s. 10 of the Act of 1922. On the question whether the profits and gains accrued or arose in British India, it might be, although it was unnecessary to decide it, that the fact that the coffee was grown in Mysore was not to be disregarded notwithstanding that it was sold in British India, expecially if it were sold without further process of a manufacturing character. The contention of the income-tax authorities had been throughout that the income assessed to tax was not within s. 4 (2) because it did not accrue or arise outside British India. It was contended that the assessee was liable under s. 4 (1), and that s. 4 (2) and its proviso did not affect the assessee's liability. The question was whether the second proviso to s. 4 (2), assuming it to apply and the assessee's income to have accrued to him in Mysore was any answer to an assessment made on him under s. 4 (1) by reason of the fact that the income was received by him originally and as income in British India in the year of account. There could be no general presumption that exemption from the provisions of a sub-section was intended as complete exemption from the tax. The distinction was between exempting a class of income in some events and exempting it in all events. *Income Tax Commissioner* v. *Maharajadhiraj of Darbhanga* (1935) L.R. 62, I.A. 215, was a case of "agricultural income" to which the Act did not apply (s. 4 (3) (viii)). The assessee must be held liable to tax under s. 4 (1), and the appeal should be allowed.

COUNSEL: *J. Millard Tucker*, K.C., and *Hubert Hull*, for the appellants; *R. P. Hills*, for the respondent.

SOLICITORS: *The Solicitor, India Office; Lambert & White.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

In re Horlick's Settlement Trusts; Colledge *v.* Horlick.

Greene, M.R., Scott and Clauson, L.JJ. 25th November, 1938.

SETTLEMENT—ANNUITY TO SETTLOR'S WIFE—CLEAR SUM AFTER DEDUCTION OF INCOME TAX AND "EVERY OTHER TAX ON INCOME"—EFFECT ON SUR-TAX.

Appeal from Farwell, J.

In 1930 a settlement was made on a dissolution of marriage. It was provided that the husband, the settlor, or his personal representatives should each year during the wife's life pay to trustees for her "such a sum as after deduction of income tax at the standard rate for the time being in force shall leave a clear sum of £4,000 and on the death of the survivor of the settlor and [the wife] the settlor's personal representatives will pay the said yearly sum to P.H. and E.H.," the children, in equal shares, or if only one were living, to that one (cl. 1 (*a*)). By cl. 1 (*b*) the annuity was to be paid in advance by equal quarterly payments. By cl. 1 (*c*) "for the purpose of better securing the payment of the said annual sum of £4,000" the trustees were to stand possessed of certain specified investments upon trust to pay the annuity out of the income thereof, or if that should be insufficient, by sale of part of the capital, in case of default of payment by the settlor or his personal representatives. By cl. 1 (*e*) the settlor might at any time during the life of the wife or the children pay the trustees "such a capital sum as will at the time of such payment produce by its income after the deduction of income tax and such other taxes on income as aforesaid the clear annual sum of £4,000" and in that event the trustees

were to transfer the investments to him. By cl. 6 (*a*) the settlor covenanted to pay the wife in trust for E.H., their daughter, every year till she attained twenty-one, such sum "as after deduction of income tax at the standard rate for the time being shall leave a clear sum of £500." In 1931 the wife married a second time, her second husband having considerable wealth. In 1934 the settlor died. Farwell, J., held that his legal personal representatives were bound to provide a sum to satisfy such proportion of the total sur-tax payable by the wife and her second husband as the sums on which she was from time to time assessed to sur-tax in respect of the annuity bore to the total amount of the assessment of their joint income for the purposes of sur-tax.

GREENE, M.R., dismissing the appeal of the legal personal representatives, said that if the word "other" was taken in contradistinction to "income tax at the standard rate" there was a slight inaccuracy because sur-tax was not a tax "other than income tax," but a deferred instalment of income tax. But his lordship would have come to the conclusion that the words in the settlement included sur-tax. There was nothing in the use of the word "deduction" which would justify the court in construing the words in the limited sense of excluding sur-tax. The problems arising out of the provision for the children in cl. 1 (*a*) which would have to be surmounted when the question arose as to their rights would not justify the court in giving a limited application to words which had a clear *primâ facie* meaning. There was nothing in cl. 1 (*b*) to justify the court in putting a limited construction on the words. Further, there was no practical difficulty in giving effect to cl. 1 (*b*). Reliance had been placed on cl. 1 (*e*) on the ground that till assessment of sur-tax on the wife it could not be known what the liability was. This argument did not impress his lordship. On the other hand, there was significance in the wording of cl. 6 (*a*). Regarding the deed as a whole, the covenant provided for the case of sur-tax. As to the way the amount of the sur-tax element in the covenanted sum was to be arrived at, his lordship agreed with Farwell, J.

SCOTT and CLAUSON, L.JJ., agreed.

COUNSEL: *Eversheď*, K.C., and *A. Nesbitt*; *Romer*, K.C., and *Sir Hugh Tooth*; *Roger Turnbull*.

SOLICITORS: *Markby, Stewart & Wadesons*; *Baileys*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Cottingham's Executors *v.* **Inland Revenue Commissioners.**

Greene, M.R., Finlay and Luxmoore, L.JJ.
30th November, 1938.

REVENUE—SUR-TAX—TRANSFER OF ASSETS AND ASSOCIATED OPERATIONS—WHETHER TAXPAYER MUST SHOW BOTH OR ONE TO BE NOT FOR PURPOSE OF AVOIDING TAXATION—ASSESSABILITY OF EXECUTORS OF DECEASED TAXPAYER—FINANCE ACT, 1936 (26 Geo. 5 & 1 Edw. 8, c. 34), s. 18.

Appeal from Lawrence, J. (82 SOL. J. 761).

For some years before his death the deceased, a Canadian by birth and domicile, had lived in the United Kingdom, where he had real and personal property. In 1933, having become incapable of managing his own affairs, he took legal advice for protecting his property against himself, and gave instructions for the drawing of a settlement under which he would be unable to deal with his assets, no question of taxation being discussed. After a settlement was drafted it was suggested that income tax might be saved by the formation of a foreign company to which the assets of the deceased could be transferred. In December, 1933, a Canadian company was formed, to which he sold a large number of shares which he held in an English company, for the issue to himself or his nominees of shares and non-interest bearing debentures in the Canadian company redeemable to the extent of 100,000 dollars a year at a premium of 12 per cent. In February, 1934, he executed two settlements covenanting to transfer the holdings in the Canadian company to trustees on the trusts of the settlements. The trustees of both resided in the United Kingdom. During the year ending the 3rd March, 1936, the Canadian company paid some £23,000 in redemption of debentures to one of the trustees, that sum being paid by him to the joint account of the deceased and his wife. No dividend was paid by the Canadian company in respect of its shares during the year ending the 5th April, 1936, and the trustees received no income during that year. The deceased died in January, 1936. His executors were assessed to sur-tax in a sum including (*inter alia*) the income of the Canadian company. It was common ground that the transfer of assets to the Canadian company was made for the sole purpose of avoiding income tax, and the settlements were made for the sole purpose of preventing the deceased from having control of his estate. By the Income Tax Act, 1936, s. 18: "For the purpose of preventing the avoiding by individuals ordinarily resident in the United Kingdom of liability to income tax by means of transfers of assets by virtue or in consequence whereof, either alone or in conjunction with associated operations, income becomes payable to persons resident or domiciled out of the United Kingdom, it is hereby enacted as follows: (1) Where such an individual has by means of any such transfer, either alone or in conjunction with associated operations, acquired any rights by virtue of which he has, within the meaning of this section, power to enjoy, whether forthwith or in the future, any income of a person resident or domiciled out of the United Kingdom which, if it were income of that individual received by him in the United Kingdom, would be chargeable to income tax by deduction or otherwise, that income shall, whether it would or would not have been chargeable to income tax apart from the provisions of this section, be deemed to be income of that individual for all the purposes of the Income Tax Acts: Provided that this sub-section shall not apply if the individual shows . . . that the transfer and any associated operations were effected mainly for some purpose other than the purpose of avoiding liability to taxation." Lawrence, J., held (1) that for the taxpayer to succeed under the proviso, he must show that the transfer of assets, which was admittedly to avoid taxation, as well as the associated operations, was effected mainly for a purpose other than the avoidance of taxation; and (2) that the retroactive effect of s. 18 (7) made the profits accruing to the deceased up to his death chargeable to sur-tax so that his executors were liable to assessment under General Rule 18 Applicable to All Schedules.

GREENE, M.R., dismissing the executors' appeal, said that it was hopeless. It was not necessary to say more than that he agreed with the judge's conclusions and reasons.

FINLAY and LUXMOORE, L.JJ., agreed.

COUNSEL: *Needham*, K.C., and *F. Talbot*; *The Attorney-General* (Sir Donald Somervell, K.C.), *J. H. Stamp* and *R. Hills*.

SOLICITORS: *Herbert Smith & Co.*; *Solicitor of Inland Revenue*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Howard *v.* **Charles P. Kinnell & Co. Ltd.**

Slesser, Clauson and Goddard, L.JJ. 30th November, 1938.

WORKMEN'S COMPENSATION—CLAIM ON BASIS OF TOTAL INCAPACITY—EMPLOYERS PROCEEDING ON BASIS OF PARTIAL INCAPACITY—ARBITRATION—WORKMAN'S RIGHT TO AWARD—WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 Geo. 5, c. 84), s. 21.

Appeal from Southwark County Court.

On the 18th February, 1936, the workman was injured by accident. His employers paid him 30s. a week compensation till the 26th April, 1938, when they reduced the amounts

to 21s. 6d. a week. On the 17th May, 1938, he commenced proceedings under the Workmen's Compensation Act, 1925, asking for an arbitration and claiming 30s. a week compensation, less the amount received to date and continuing. In their answer filed on the 11th June, 1938, the employers stated that "since the 26th April, 1938, and before that date, the applicant has not been totally incapacitated for work, but has been and is now able to earn, in suitable employment or business, wages which do not entitle him to compensation at a greater rate than 21s. 6d. per week." They denied liability to pay compensation in excess of 21s. 6d. a week. His Honour Judge Wells found that the man was only partially incapacitated to the extent of 21s. 6d. a week. He refused to make an order for that amount in his favour, but made an award for the employers without more.

SLESSER, L.J., allowing the workman's appeal, said that there was clearly a question arising between the parties whether the man was incapacitated to the extent of 30s. a week or 21s. 6d. a week, or some intermediate sum. His lordship referred to s. 21 (1) of the Act and r. 18 (3) of the Rules under the Act and said that the employers having stated in their answer that the man was not entitled to compensation at a greater rate than 21s. 6d. a week, that was an admission made in the arbitration that he was entitled to some compensation. The workman contended that the judge's award did not represent the effect in law of his decision and that there should be an award for him of 21s. 6d. a week which it had been found he was entitled to receive. That was right, the issue being whether he should receive 30s. or what lesser sum might be awarded. The fact that the employers conceded that they were liable to the extent of 21s. 6d. did not disentitle the man to an award once there was an issue under s. 21, as there was here. There must be an award for 21s. 6d. a week.

CLAUSON and GODDARD, L.JJ., agreed.

COUNSEL: *Reese; Beney.*

SOLICITORS: *Scott Duckers & Co.; A. E. Wyeth & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Cohen *v.* J. Lester, Ltd.

Tucker, J. 21st October, 1938.

MONEYLENDING—UNENFORCEABLE CONTRACT—SUM DUE FROM BORROWER TO LENDER UNDER—CLAIM FOR DELIVERY UP OF JEWELLERY HELD AS SECURITY—WHETHER MAINTAINABLE WITHOUT PAYMENT OF SUM DUE—MONEYLENDERS ACT, 1927 (17 & 18 GEO. V, c. 21), s. 6.

Action tried by Tucker, J., without a jury.

The plaintiff, Cohen, entered into four moneylending transactions with the defendant moneylenders, in all but the first of which the cash paid to the plaintiff was less than the nominal amount of the loan because part of the sum lent was applicable to repayment of a sum already owing on the previous transaction. The total amounts of cash received and repaid were respectively £391 and £365. At each transaction the plaintiff deposited jewellery with the defendants as security. The plaintiff brought this action claiming a declaration that the contracts were illegal, void and unenforceable for non-compliance with the Moneylenders Act, 1927; delivery up of the jewellery, and an injunction to restrain the defendants from disposing of it. It was admitted by the defendants that the provisions of s. 6 of the Act of 1927 had not been complied with in various respects, and they were willing to submit to the injunction and to a declaration that the contracts were unenforceable. They contended, however, that the £232 10s., which was payable under the contracts if enforceable, was due to them under the last transaction which, they said, was not void or illegal; and that the plaintiff was not entitled to delivery up of the jewellery until she had paid the defendants that sum.

TUCKER, J., said that it was argued for the defendants that s. 6 of the Act of 1927 said that a contract should not be enforceable which did not fulfil certain conditions, and not that it should be void or illegal. Counsel had called attention to s. 5 (6), where a transaction was declared to be illegal. The judgment of Sir Wilfrid Greene, M.R., in *Re Chetwynd's Estate* (1937), 157 L.T. 125, made clear that s. 6 made a contract unenforceable, and not void or illegal. Counsel for the defendants contended that, as the plaintiff was applying to the equitable jurisdiction of the court, she could only obtain the relief which she sought—namely, the return of the jewellery—by paying the sum due to the defendants under the contracts; counsel invoked the principle that a person seeking equity must come with clean hands, and contended that it would be inequitable to order delivery of the jewellery without repayment of the sum due. He argued that this case was even stronger than *Lodge* v. *National Union Investment Co. Ltd.* [1907] 1 Ch. 300. It was to be observed that the transaction there was one expressly stated by s. 2 of the Moneylenders Act, 1900, to be illegal. Parker, J., there decided that a plaintiff could only recover a security on payment of money due from him. That decision proceeded on the basis that a person who had been a party to an illegal contract, and who was only entitled to come to the court by reason of certain exceptions in a statute passed for the benefit of borrowers, could come to the court only on certain terms. Here, a person sought the protection of the Act in respect of a contract which was not illegal, but unenforceable. The question for decision was whether for the purposes of the principle under consideration there was any distinction between contracts declared illegal and those declared unenforceable. It was the law that in cases under s. 6 the borrower was not put on terms with regard to repayment of money due, but was entitled to keep what he had received, and also to a declaration that the contract was unenforceable, and to delivery up of bills of sale given in pursuance of the contract. Counsel for the defendants argued that they were not seeking to enforce their security in respect of the jewellery, but only to say that the plaintiff must herself do equity before receiving it. In his (his lordship's) opinion, counsel was seeking to enforce the contract by contending that the defendants were entitled to keep the jewellery. Their title to the jewellery was only derived from the unenforceable contracts, and counsel was in effect doing the very thing which s. 6 forbade—namely, seeking to enforce an unenforceable contract. A distinction must be drawn between cases where the transaction was made illegal and one where it was made unenforceable. The plaintiff's claim accordingly succeeded, and she was entitled to the relief which she claimed.

COUNSEL: *H. Samuels*, for the plaintiff; *Cyril Salmon*, for the defendants.

SOLICITORS: *Lieberman, Leigh & Co.; L. A. Finklestone.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law].

Joynson's Executors *v.* Liverpool Corporation.

Lord Hewart, C.J., Charles and Macnaghten, JJ. 26th October, 1938.

LOCAL GOVERNMENT—RATES—CHEQUE POSTED ON LAST DAY FOR PAYMENT—RECEIVED BY RATING AUTHORITY NEXT DAY—WHETHER PAYMENT MADE IN TIME.

Appeal by case stated from a decision of the Liverpool stipendiary magistrate.

The appellants, the executors of the late Joseph Joynson, were rated as owners of property within the Liverpool rating area. An instalment of rates was payable on the 7th November, 1937; and by the Liverpool Corporation Act, 1921, if an instalment was not paid "on or before the expiration" of the statutory period, the ratepayer was not

entitled to the abatement of rates provided by the statute. The 7th November, 1937, being a Sunday, the corporation, for convenience, fixed the 8th November as the date for payment, and issued a demand note so stating. Before 9.30 p.m., on the 8th November, the appellants posted a duly stamped letter in the city, the letter being addressed to the corporation and enclosing a cheque for the amount of the rate due after abatement. The corporation received the letter and cheque on the 9th November, but contended that the payment was out of time and ought therefore to have been made without abatement. On application by the corporation to the magistrate for the issue of a warrant for distress to recover the amount of the abatement, it was contended for the appellants (1) that the words "on . . . the expiration" meant after, meaning a reasonable time after, the expiration of the prescribed period (*Altrincham Electric Supply Ltd.* v. *Sale U.D.C.* (1936), 154 L.T. 379); (2) that they were authorised expressly or impliedly to pay the rate by cheque and by post, the post office becoming the corporation's agent to receive the payment, with the result that the payment was made on the 8th November with the posting of the cheque (*Norman* v. *Ricketts* (1886), 3 T.L.R. 182); and (3) that the demand note was void for stating for payment a day outside the statutory period (*Rowberry* v. *Morgan* (1854), 9 Ex. 730.

LORD HEWART, C.J., said that the magistrate had decided that the appellants had failed to pay the instalment of rates in question on or before the expiration of seven months from the 7th April, 1937; that the payment had not been made until the 9th November, 1938, the post office not being the corporation's agent to receive payments; and that the corporation were, in the circumstances, legally entitled to fix the 8th November as the last day for payment, and to insert it in the demand note. That decision was manifestly right, and the appeal must be dismissed.

CHARLES and MACNAGHTEN, JJ., agreed.

COUNSEL: *F. K. Glazebrook*, for the appellants; *Trustram Eve*, K.C., and *Basil Nield*, for the corporation.

SOLICITORS: *Hair & Co.* for *North, Kirk & Co.*, Liverpool; *F. Venn & Co.*, for *W. H. Baines*, Town Clerk, Liverpool.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Hoare *v.* Adam Smith (London) Ltd.

du Parcq, L.J. (sitting as an additional Judge).
2nd November, 1938.

MONEYLENDING—LOAN SECURED BY BILL OF SALE—TERMS OF CONTRACT CONTAINED PARTLY IN MEMORANDUM AND PARTLY IN BILL OF SALE—WHETHER COMPLIANCE WITH STATUTE—SUM DUE IN RESPECT OF PREVIOUS LOANS—INACCURATELY STATED IN BILL OF SALE—EFFECT—MONEYLENDERS ACT, 1927 (17 & 18 Geo. V, c. 21), s. 6.

Action for a declaration that certain moneylending contracts were unenforceable.

The plaintiff, Hoare, had had several money-lending transactions with the defendants, a company of registered moneylenders. In July, 1937, the parties entered into a contract which, according to the memorandum, provided that the plaintiff agreed to borrow from the defendants £40, executing a bill of sale for that amount, and to make repayments of capital and interest by monthly instalments. The bill of sale recited that £25 8s. 9d. due to the defendants under previous transactions was to be repaid out of the £40. In fact, the sum owing under the previous transactions was less than £25 8s. 9d. The plaintiff contended *inter alia* that the consideration for the bill of sale was not truly stated, and that the memorandum failed to state the consideration truly in that it did not set out all the terms contained in the bill of sale.

DU PARCQ, L.J., said that the first question to be decided was whether the plaintiff was entitled to a declaration that the contract of July, 1937, and the bill of sale executed on the same date, were illegal, void and unenforceable, for non-compliance with the provisions of the Moneylenders Acts and the Bills of Sale Act, to an injunction restraining the defendants from taking steps to enforce the bill of sale, and to delivery up thereof. In his (his lordship's) opinion, this was a case where the moneylenders were entitled to have the bill of sale and the memorandum looked at together for the purpose of seeing whether the memorandum complied with the provisions of s. 6 of the Moneylenders Act, 1927. He did not dissent from the judgment of Lawrence, J., in *Mitchener* v. *Equitable Investment Co. Ltd.* ([1938] 2 K.B. 559; 82 SOL. J. 257). It was plain in that case as in *Stewart-Naylor* v. *London & Westminster Loan & Discount Co. Ltd.* (1937), unreported, that the borrower, unlike the present plaintiff, had not received a copy of the bill of sale. Applying what he regarded as having been decided, at any rate, by the majority of the Court of Appeal in *Reading Trust Ltd.* v. *Spero* [1930] 1 K.B. 492, he was of opinion that it was, in all the circumstances, sufficient if the bill of sale accurately contained all the terms of the contract. That, however, did not conclude the matter. Less than the stated £25 8s. 9d. was already due and owing to the defendants. The plaintiff was not lent £40 as stated. The consideration for the bill of sale was accordingly not truly stated, and the plaintiff acquired the right by virtue of s. 8 of the Bills of Sale Act, 1882, to have the bill of sale treated as void in respect of the chattels to which it referred. The memorandum of the contract was also bad for non-compliance with s. 6 of the Act of 1927, in that it failed to state the actual amount of the loan. Counsel for the defendants argued that the plaintiff was estopped from raising this point. In his (his lordship's) opinion, the defendants could not rely on any plea of estoppel. In many cases the provisions of the Bills of Sale Act would become a nullity if it were held that a statement made in setting out the consideration for the bill operated to estop a party from denying that that consideration was truly stated. The same applied to the Moneylenders Act, 1927. Section 6 of that Act provided that the note or memorandum of the contract should contain all the terms of the contract; and when part of those terms were to be found in a bill of sale by reference—as he (his lordship) thought that they might be—it was no answer to a contention that the terms of the contract were inaccurately stated to set up a supposed estoppel arising out of the bill of sale. That would be to prevent the court from carrying out the intention of the Legislature. There must be judgment for the plaintiff.

COUNSEL: *H. Samuels*, for the plaintiff; *J. B. Blagden*, for the defendants.

SOLICITORS: *Lieberman, Leigh & Co.*; *T. Vincent Howells.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Bush *v.* Bush.

Sir Boyd Merriman, P. 29th and 30th November, 1938.

DIVORCE—DESERTION—PREVIOUS PETITION ON THE GROUND OF ADULTERY — ABANDONMENT — STATUTORY PERIOD PREVENTED FROM RUNNING—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49), s. 176 (*b*); MATRIMONIAL CAUSES ACT, 1937 (1 Edw. 8 and 1 Geo. 6, c. 57), ss. 2, 6.

This was a wife's undefended suit for dissolution on the ground of desertion for three years immediately preceding the presentation of the petition in which the question was again raised whether the filing of a petition by the wife, though not proceeded with, within the three-year period, prevented desertion from continuing to run. The parties married in 1919. In 1933 the husband left the wife. In 1936 the wife filed a petition for dissolution on the ground of adultery, which she did not proceed with for lack of sufficient evidence,

and had dismissed in February, 1938. In March, 1938, the wife filed her present petition.

Sir BOYD MERRIMAN, P., in giving judgment, said that on 5th December, 1932, the husband deserted the wife, but the wife presented her previous petition two and half years after the desertion commenced. From June, 1936, to February, 1938, she had a petition on the file praying that the marriage might be dissolved on the ground that the husband was living in adultery with the woman named therein. The present petition was presented one month and a few days after the dismissal of the previous petition, and unless the wife could ignore the period during which the previous petition remained on the file she could not make up a period of three years' desertion, continuous or otherwise, immediately preceding the presentation of the present petition. Therefore the wife had to seek to include in the period of desertion alleged the time during which her previous petition was on the file. His lordship referred to the judgment of Sir H. H. Cozens-Hardy, M.R., in *Stevenson* v. *Stevenson* [1911] P. 191, at p. 194, and continued that he, his lordship, was not oblivious of the fact that the earlier petition in that case was a petition for judicial separation, but it seemed to him that a petition for dissolution was *a fortiori*. The point raised in the present petition had fallen to be decided by Langton, J., in *Marthews* v. *Marthews*, 82 SOL. J. 953, and by Henn Collins, J., in *Walton* v. *Walton*, 82 SOL. J. 954. He, his lordship, was entirely in agreement with those decisions, and so long as the decision in *Stevenson* v. *Stevenson, supra*, stood it was impossible to hold that desertion continued during the period in which the wife herself was presenting a petition for dissolution on the ground of adultery. Mr. Horner had referred him to the judgment in *Johnson* v. *Johnson*, 82 SOL. J. 698. He, his lordship, was not satisfied that the reasoning in that judgment, based upon the Matrimonial Causes Act, 1937, s. 6, was sound. That section was dealing with an entirely different subject-matter, and it was not possible to deduce from express provisions, designed to meet the case where a judgment of the Divorce Court or of a court of summary jurisdiction had been given, any conclusion as to the effect of the mere presentation of a petition. In his view, the Matrimonial Causes Act, 1937, had not altered the law as to the presentation of a petition as laid down by *Stevenson* v. *Stevenson, supra*. In a proper case the question whether (there having been a complete period of desertion, as in *Johnson* v. *Johnson, supra*, before a petition had been presented, and a period of desertion after the dismissal of such petition) it were possible, so to speak, to add the two periods together in order to get a cumulative period of three years and upwards continuing down to the presentation of the petition might have to be considered in due course. However, that was not the present case, because, even on that method of approach, the wife could not make up a period of three years, continuous or otherwise. For those reasons the petition must be dismissed.

COUNSEL: *B. Stuart Horner*, for the petitioner.
SOLICITOR: *Edgar H. Hiscocks.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Societies.

The Medico-Legal Society.

ANNUAL DINNER.

This society held its annual dinner at the Connaught Rooms on the 16th December, 1938, with its president, Mr. Justice HUMPHREYS, in the chair.

The toast of Medicine and Law was proposed by SIR ROBERT H. PICKARD, vice-chancellor of the University of London, who said that the society strove to bring about a *concordat*, or mutual assistance pact, between the two professions to assist each to profit by the progress of the other.

VISCOUNT DAWSON OF PENN, in reply, said that the great virtue of the common law was its capacity of developing to suit changing circumstances. He instanced Mr. Justice Macnaghten's summing-up in *R.* v. *Bourne*, which he said was the first time in which the common law had related health to quality rather than quantity of life. He pleaded for a revision of the common law of mayhem to ensure that certain kinds of surgical operations beneficial to the community and consented to by the patient, but not performed for his own health, might be legal—e.g. sterilisation to prevent the birth of children afflicted with congenital disease, or removal of the gall-bladder from a carrier of typhoid infection.

Mr. JUSTICE MACNAGHTEN, also in reply, declared that the common law, founded on the common-sense of the people, was unchanged and unchangeable. In his summing-up he had stated what had always been the law: that it was lawful to procure miscarriage to preserve the life of the mother; and that preserving life did not mean preserving her life as a lunatic or as a physical wreck, for that was not really to be called life at all.

Mr. ST. JOHN MICKLETHWAIT, K.C., who proposed "The Medico-Legal Society," recalled the old days of the criminal law, with its hideous punishments of hanging, flogging and *peine forte et dure*. The abolition of nearly all corporal punishment had, he said, come about largely through the influence of medical thought on the Legislature. Probation had aroused violent opposition thirty years ago, but had proved its value and was now being greatly extended. The new Criminal Justice Bill was a greater step in the direction of remedial punishment than had ever been taken before.

The PRESIDENT dealt with the domestic affairs of the Society, of which he gave a highly satisfactory account. The subjects which had been discussed had included medico-legal work in India, unqualified medical practice, coal-mining, the new Divorce Act, the detection of forgeries by invisible light, the significance of bruising, and the place of the psychiatrist in the administration of criminal law.

JUDGE T. B. LEIGH, proposing the health of the guests, said that he was playing a double part, for he was at once a member of the Society and President of the Manchester Medico-Legal Society, which was associated with the older body and regarded it as an elder sister to go to for help and advice. The new body had a growing membership of about 200 and held six meetings a year. Professor W. H. ROBERTS, president of the Society of Public Analysts, and Miss ELIZABETH BOLTON, president of the Medical Women's Federation, replied.

United Law Society.

The Rt. Hon. Lord Porter presided at the annual dinner of the United Law Society held at the Cafe Royal on Monday, 12th December, 1938.

The guests of the Society included The Rt. Hon. Lord Justice Finlay, K.B.E., The Hon. Mr. Justice Stable, Mr. F. Raymond Evershed, K.C., Mr. H. J. Wallington, K.C., Mr. Randle F. W. Holme (Vice-President of The Law Society) and Sir Adair Hore, K.B.E., C.B.

The following officers of the Society were present: Mr. J. H. Vine Hall (Chairman), Mr. R. J. Kent (Vice-Chairman), Mr. F. Howard Butcher (Hon. Treasurer), Mr. F. R. McQuown and Mr. O. T. Hill (Hon. Secretaries), Mr. E. Dennis Smith (Reporter), Mr. H. Wentworth Pritchard (Organiser of the Poor Man's Lawyer) and Mr. F. W. Yates (Hon. Auditor).

Law Students' Debating Society.

At a meeting of the Society, held at The Law Society's Court Room, on Tuesday, 20th December, 1938 (Chairman, Mr. J. B Latey), the subject for debate was "That marriages are made in heaven." Mr. H. F. MacMaster opened in the affirmative; Mr. Q. B. Hurst opened in the negative. The following members also spoke: Messrs. H. J. Dowding, Godfrey Roberts, J. M. Shaw, P. H. North-Lewis and J. R. Campbell-Carter. The opener having replied, the motion was lost by one vote. There were twelve members and four visitors present.

Ladies and gentlemen desirous of becoming members of the Society are requested to communicate with the secretaries. Barristers, solicitors, articled clerks to solicitors, members or students of an Inn of Court or University, graduates of a University, and students enrolled under the regulations dated 29th July, 1932, made under the Solicitors Act, 1932, are qualified for election. Hon. Secretaries: M. Foulis (Whitehall 2731) and J. B. Latey (Central 7972).

Rules and Orders.

THE SUPREME COURT FEES (AMENDMENT) ORDER, 1938. DATED DECEMBER 20, 1938.

The Lord Chancellor, the Judges of the Supreme Court and the Treasury, in pursuance of the powers and authorities vested in them, respectively, by section 213 of the Supreme Court of Judicature (Consolidation) Act, 1925,† section 305 of the Companies Act, 1929,‡ and sections 2 and 3 of the Public Offices Fees Act, 1879,§ do hereby, according as the provisions of the above-mentioned enactments respectively authorise and require them make, advise, concur in, sanction and consent to, the following Order :—

1. A Fee referred to by number in this Order means the Fee so numbered in Schedule I to the Supreme Court Fees Order, 1930.‖

2. In Fee No. 23 the following words shall be substituted for the words in the First Column :—

" On entering or setting down a cause or matter in the Short Cause List . . ."

3. The following Fee shall be inserted after Fee No. 69 :—

First Column.	Second Column.	Third Column.
Item.	Fee.	Document to be Stamped.
	£ s. d.	
" 69A. On an adjourned hearing of a summons before a Master under Section 17 of the Married Women's Property Act, 1882, at which witnesses are to be called and examined— for every hour or part of an hour	0 10 0	The summons."

4. The following Fee shall be inserted after Fee No. 109 :—

First Column.	Second Column.	Third Column.
Item.	Fee.	Document to be Stamped.
	£ s. d.	
" 109A. For a photographic copy of a script filed in a probate action—		The fee book.*
(*a*) for the first copy on any application—		
(i) for every photographic foolscap sheet	0 2 0	
(ii) for every photographic sheet over foolscap	0 4 0	
(*b*) for every additional copy on the same application—		
(i) for every photographic foolscap sheet	0 1 6	
(ii) for every photographic sheet over foolscap	0 3 0	

5. This Order may be cited as the Supreme Court Fees (Amendment) Order, 1938, and the Supreme Court Fees Order, 1930, as amended, shall have effect as further amended by this Order.

6. This Order shall come into operation on the 11th day of January, 1939, except paragraph 4 hereof which shall come into operation on the 1st day of March, 1939.

Dated the 20th day of December, 1938.

Maugham, C. — *Wilfred Greene*, M.R.
Hewart, C.J. — *F. B. Merriman*, P.
Lords Commissioners of His Majesty's Treasury. — *Stephen N. Furness.* — *Patrick Munro.*

† 15 & 16 Geo. 5. c. 49.
‡ 19 & 20 Geo. 5. c. 23.
§ 42 & 43 Vict. c. 58.
‖ S.R. & O. 1930 (No. 579) p. 1728.

THE LOCAL GOVERNMENT SUPERANNUATION (SURRENDER OF SUPERANNUATION ALLOWANCE) RULES, 1938, DATED DECEMBER 13, 1938, MADE BY THE MINISTER OF HEALTH UNDER SECTION 9 OF THE LOCAL GOVERNMENT SUPERANNUATION ACT, 1937 (1 Edw. 8 & 1 Geo. 6, c. 68). [S.R. & O., 1938, No. 1509. Price 2d. net.]

FORMS FOR USE IN DISTRICT REGISTRIES, APPROVED BY THE LORD CHANCELLOR, DECEMBER 22, 1938, IN ACCORDANCE WITH RULE 33 OF ORDER LXI OF THE RULES OF THE SUPREME COURT. [S.R. & O., 1938, No. 1600/L.31. Price 1d. net.]

THE RULES OF THE SUPREME COURT (CRIMINAL PROCEEDINGS), 1938. Dated December 22, 1938.
[S. R. & O., 1938, No. 1576/L.29. Price 2d. net.]

THE RULES OF THE SUPREME COURT (DIVISIONAL COURTS), 1938. Dated December 22, 1938.
[S. R. & O., 1938, No. 1577/L.30. Price 7d. net.]

THE RULES OF THE SUPREME COURT (No. 2), 1938. Dated December 23, 1938.
[S. R. & O., 1938, No. 1575/L.28. Price 1d. net.]

Legal Notes and News.

New Year Legal Honours.

BARON.

The Right Hon. Sir (FREDERICK) ARTHUR GREER, LL.D. Lately a Lord Justice of Appeal.

BARONET.

Sir (WILLIAM) PETER RYLANDS, J.P. Called to the Bar by the Inner Temple in 1894. For political and public services in Lancashire and Cheshire.

KNIGHTS BACHELOR.

ARTHUR KIRWAN AGAR, Esq., Colonial Legal Service, Chief Justice, British Honduras. Called to the Bar by Gray's Inn in 1919.

JOHN MINTY BAGULEY, Esq., Indian Civil Service, Puisne Judge of the High Court of Judicature at Rangoon. Called to the Bar by the Inner Temple in 1925.

RAI BAHADUR PANDIT SEETLA PRASAD BAJPAI, C.I.E., Judicial Minister and Chief Justice, Jaipur State, Rajputana.

EDWARD BENNETT, Esq., Indian Civil Service, Puisne Judge of the High Court of Judicature at Allahabad, United Provinces. Called to the Bar by the Inner Temple in 1922.

Alderman GILFRID GORDON CRAIG, J.P., D.L. Admitted a solicitor in 1895. For political and public services in Middlesex.

REGINALD CHARLES DAVIES, Esq. Admitted a solicitor in 1908. For political and public services in Leeds.

GERALD DODSON, Esq., LL.M., J.P. Recorder of the City of London.

ARTHUR TREVOR HARRIES, Esq., Chief Justice of the High Court of Judicature at Patna, Bihar. Called to the Bar by the Middle Temple in 1922.

ERNEST ARTHUR JELF, Esq., King's Remembrancer and Senior Master of the Supreme Court. Called to the Bar by the Inner Temple in 1893.

GEORGE SHAW KNOWLES, Esq., C.B.E., LL.M., Solicitor-General, Secretary to the Attorney-General's Department and Parliamentary Draftsman, Commonwealth of Australia.

PERCY ALEXANDER MCELWAINE, Esq., Colonial Legal Service, Straits Settlement.

CHETTUR MADHAVAN NAYAR, Esq., Puisne Judge of the High Court of Judicature at Fort St. George, Madras.

The Hon. HENRY HUBERT OSTLER, Senior Puisne Judge of the Supreme Court, Dominion of New Zealand.

SITARAM SUNDERRAO PATKAR, Esq., lately Puisne Judge of the High Court of Judicature at Bombay, Bombay.

HARRY SHEIL ELSTER VANDERPANT, Esq., Chairman, London and Home Counties Traffic Advisory Committee. Called to the Bar by Gray's Inn in 1919.

JOHN BALLINGALL FORBES WATSON, Esq., Director of the National Confederation of Employers' Organisations. Called to the Bar by the Middle Temple and to the Scots Bar in 1919.

ORDER OF THE BATH.

C.B.

CYRIL THOMAS FLOWER, Esq., F.S.A., Deputy Keeper of Public Records, Public Record Office. Called to the Bar by the Inner Temple in 1906.

ORDER OF ST. MICHAEL AND ST. GEORGE.

K.C.M.G.

Sir ALGERNON EDWARD ASPINALL, C.M.G., C.B.E., lately Secretary to the West India Committee. Called to the Bar by the Inner Temple in 1897.

The Hon. HAYDEN ERSKINE STARKE, Puisne Judge of the High Court of the Commonwealth of Australia.

ORDER OF THE INDIAN EMPIRE.

C.I.E.

JOHN FREDERICK GENNINGS, Esq., C.B.E., Commissioner of Labour, Commissioner for Workmen's Compensation and Director of Information, Bombay. Called to the Bar by the Middle Temple in 1911.

ORDER OF THE BRITISH EMPIRE.

K.B.E.

Major The Hon. EDWARD CECIL GEORGE CADOGAN, C.B., J.P. Member of Parliament for Reading, 1922–23, and for Finchley, 1924–35. Deputy Chairman of the National Fitness Council for England and Wales. Chairman of the Departmental Committee on Corporal Punishment. Called to the Bar by the Inner Temple in 1905. For political and public services.

The Hon. HENRY EDWARD MANNING, K.C., M.L.C., Attorney-General and Vice-President of the Executive Council, State of New South Wales.

JOHN ARMITAGE STAINTON, Esq., Second Parliamentary Counsel to the Treasury. Called to the Bar by Lincoln's Inn in 1913.

C.B.E.

JOHN HARVEY DAVIES, Esq., Clerk of the Peace and Clerk of the County Council, Flintshire.

ERNEST CHARLES MARTIN, Esq., M.B.E., Superintendent of County Courts.

O.B.E.

JOHN JOSEPH MCINTYRE, Esq., Secretary of the Rural District Councils Association. Admitted a solicitor in 1906.

ROBERT MITCHELHILL MIDDLETON, Esq., Town Clerk of Lancaster. Admitted a solicitor in 1921.

Lieutenant-Colonel WALLACE RODERICK DUNCAN ROBERTSON, M.C., T.D., Officer Commanding 86th (East Anglian) (Herts Yeomanry) Field Brigade, Royal Artillery, Territorial Army. Called to the Bar by the Inner Temple in 1933.

Major RICHARD ATKINSON ROBINSON, T.D., Air Raid Precautions Officer, Middlesex County Council. Called to the Bar by the Middle Temple in 1906.

Lieutenant-Colonel GEOFFREY GEORGE HETLEY SYMES, T.D., Officer Commanding Dorsetshire Heavy Brigade, Royal Artillery, Territorial Army. Admitted a solicitor in 1921.

Captain WALTER ERIC THOMAS, M.C., K.C., Attorney-General, Southern Rhodesia.

M.B.E.

WILLIAM HARRY HARRIS, Esq., Clerk to the Walton and Weybridge Urban District Council. Admitted a solicitor in 1933. For services in connection with Air Raid Precautions.

SYDNEY JAMES MCVICAR, Esq., Assistant Solicitor to the West Riding of Yorkshire County Council. Admitted a solicitor in 1931. For services in connection with Air Raid Precautions.

Honours and Appointments.

The King has been pleased to approve that Sir PHILIP WILBRAHAM BAKER-WILBRAHAM, Bart., be appointed First Church Estates Commissioner, in succession to the late Sir George Middleton. Sir Philip Wilbraham Baker-Wilbraham was called to the Bar by Lincoln's Inn in 1901.

The King, on the recommendation of the Lord Chancellor, has approved the following appointments in accordance with the provisions of the Administration of Justice Act, 1938. They take effect as from 2nd January, 1939 :—

Mr. RALEGH BULLER PHILLPOTTS, Mr. ROBERT THESIGER WATKIN-WILLIAMS, and Sir GEORGE STUART ROBERTSON, K.C., to be Deputy Chairman of Devon Quarter Sessions.

Mr. ERNEST RUTHVEN SYKES to be Chairman and Captain LEWYS LEGGE YEATMAN to be Deputy Chairman of Dorsetshire Quarter Sessions.

Mr. STANSFIELD PIM RICHARDSON to be Deputy Chairman of Durham County Quarter Sessions.

Sir JOSEPH HERBERT CUNLIFFE, K.C., to be Chairman and Mr. LINTON THEODORE THORP, K.C., to be Deputy Chairman of Essex Quarter Sessions.

Major Sir WILLIAM COPE, K.C., and Mr. STANLEY EVANS to be Deputy Chairmen of Glamorganshire Quarter Sessions.

Mr. EDWARD CLEMENT DAVIES, K.C., M.P., to be Chairman of Montgomeryshire Quarter Sessions.

Sir BEDFORD LOCKWOOD DORMAN to be Deputy Chairman of North Riding of Yorkshire Quarter Sessions.

Mr. HENRY VIVIAN PHILLIPS to be Chairman and Mr. CHARLES ALSAGER ELGOOD to be Deputy Chairman of West Kent Quarter Sessions.

The Lord Chancellor has appointed Mr. ALFRED HENRY SOUTHRON to be the Registrar of the Berwick-upon-Tweed County Court as from the 1st day of January, 1939. Mr. Southron was admitted a solicitor in 1908.

Mr. JOHN MCGONIGAL, K.C., has been appointed County Court Judge of Tyrone, Northern Ireland. He was called to the Irish Bar in 1892 and to the Inner Bar in 1911.

Mr. FRANK MURPHY, former High Commissioner for the Philippines and Governor of Michigan, has been appointed to succeed Mr. Homer Cummings in the post of Attorney-General for the United States.

Mr. L. CLAIRE MOYER, K.C., of Ottawa, has been appointed Clerk to the Senate of Canada, in succession to Mr. A. E. Blount, who has retired.

Professional Announcements.

(2s. per line.)

WILLIAM P. WEBB, of 5 Verulam Buildings, Gray's Inn, W.C.1, and GEORGE VICTOR MAX HAMER, who has for some time past practised as JUSTICE & PATTENDEN, at 12 Bernard Street, Russell Square, W.C.1, have amalgamated their practices as from the 1st January, 1939, and the joint practice will as from that date be carried on at 5, Verulam Buildings, Gray's Inn, W.C.1 (Telephone No. Chancery 7066), under the style of WILLIAM P. WEBB.

Messrs. SLAUGHTER AND MAY, of 18 Austin Friars, E.C.2, have taken into partnership as from 1st January, Mr. JOHN GROSVENOR BEEVOR, who has been associated with them for some years past.

Mr. MILES HOWARD PRANCE, son of the late Mr. Miles Herbert Prance, of Messrs. LAMB, SON & PRANCE, 2, Clements Inn, Strand, W.C.2, is entering into partnership, as from the 1st January, with Mr. MAURICE FOOKS. The name of the new firm will be Messrs. LAMB, PRANCE and FOOKS.

Notes.

The next Quarter Sessions of the Peace for the Borough of Stamford will be held at the Town Hall, Stamford, on Wednesday, 1st February, at 11.30 a.m.

Mr. Ernest E. Bird has been re-elected Chairman of the Board of Directors of The Legal & General Assurance Society Ltd. for the ensuing year, and The Hon. W. B. L. Barrington re-elected Vice-Chairman.

A notice of the death on the 27th December, 1938, at the age of seventy-four, of Mr. William Ellis Beasley, for forty years clerk and managing clerk with R. B. Berridge & Sons, solicitors, 8, Friar Lane, and their successors, Ingram & Co., appeared in *The Times* last week.

Mr. H. St. John Raikes, K.C., Chairman, remarked at Derbyshire Quarter Sessions last Wednesday, that the law was becoming more and more merciful. He added : " Our legislators are, I will not say attempting to make, but rather tending to make, dishonesty and other crimes rather attractive. I do not wish to comment upon that because the new Act with which we shall have to deal has not come into force."

A course of nine lecture discussions for magistrates will be given on Tuesdays, at 6 p.m., at The Tavistock Clinic, Malet Place, London, W.C.1, on " The Psychology of Delinquency—Its Nature and Treatment." The first lecture will be given on Tuesday, 31st January. These discussions are open only to magistrates and to members of the legal profession. Tickets may be obtained from the Educational Secretary, the Tavistock Clinic, Malet Place, London, W.C.1.

The annual general meeting of the Bar will be held in the Inner Temple Hall on Wednesday, the 18th January, at 4.15 o'clock, at which the Attorney-General will preside. Any member of the Bar shall be at liberty to bring forward for discussion at the above meeting any resolution, provided that notice thereof shall have been given in writing to the Secretary of the Council not less than seven clear days before the day of meeting, and that in the opinion of the Executive Committee of the Council such resolution is a matter of general interest to the Bar.

H.M. LAND REGISTRY.

OFFICIAL SEARCHES OF THE INDEX MAP IN THE COUNTY BOROUGH OF CROYDON.

1. The Chief Land Registrar announces that on and after 1st January, 1939, when registration of title on sale became compulsory in the County Borough of Croydon, official searches of the Index Map of that area to ascertain whether or not land is registered or whether there are any cautions or priority notices against first registration will be made without fee and without a plan, provided that such a description of the land to be searched against on the Index Map is given (e.g., by road number) as will enable the land to be identified thereon. The application for search need be in no special form. It should be made by post and will be answered by return of post.

2. Solicitors are requested to note that a similar service cannot be extended to non-compulsory areas. In such areas Rule 286 must be complied with, and a fee of 5s. must accompany the application for the search.

LEGAL & GENERAL ASSURANCE SOCIETY LIMITED.

The Life New Business figures for 1938 show that during the year 21,417 policies were issued, compared with 21,082 in 1937. The total net Life Sums Assured amounted to £16,473,756 as compared with £18,549,226 in 1937. The net new business in the Life Assurance Fund is divided into two categories as follows: Ordinary Business, £7,205,703; Decreasing Term and Group, £9,268,053. 967 Immediate Annuities were issued in connection with which the Consideration money received amounted to £1,142,731 as compared with 1,112 Immediate Annuity Bonds for £1,409,504 Consideration money in 1937. Deferred Annuities, including Group Annuities, amounted to £1,895,943 per annum as against £2,214,403 per annum for 1937. 126 Sinking Fund policies were issued for an amount of £1,223,876 as against 353 policies for an amount of £1,518,320 in the previous year.

COUNTY COURT CALENDAR FOR JANUARY, 1939.

The following are the dates of sittings during January of Circuits 40, 42 and 46, which were received too late for inclusion in the Calendar in last week's issue :—

Circuit 40—Middlesex.
His Honour Judge Thompson, K.C.
His Honour Judge Drucquer (Add.).
His Honour Judge David Davies, K.C. (Add.).
Bow, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, 31.

Circuit 42—Middlesex.
His Honour Judge Sir Hill Kelly.
Bloomsbury, 10, 11, 12, 13 (J.S.), 16, 17, 18, 19, 20 (J.S.), 23, 24, 25, 26, 27 (J.S.), 30, 31.

Circuit 46—Middlesex.
His Honour Judge Drucquer.
*Brentford, 16, 19, 23, 26, 30.
Willesden, 11, 13, 17, 18, 20, 24, 25, 27, 31.

* = Bankruptcy Court. (J.S.) = Judgment Summonses.

WINTER ASSIZES.

The following days and places have been fixed for holding the Winter Assizes, 1939 ;—

WESTERN CIRCUIT.—Mr. JUSTICE TUCKER.—Saturday, 14th January, at Devizes ; Thursday, 19th January, at Dorchester ; Thursday, 26th January, at Taunton ; Thursday, 2nd February, at Bodmin. Mr. JUSTICE ATKINSON and Mr. JUSTICE TUCKER.—Saturday, 11th February, at Exeter ; Tuesday, 21st February, at Bristol ; Thursday, 2nd March, at Winchester.

NORTH EASTERN CIRCUIT.—Mr. JUSTICE WROTTESLEY and Mr. JUSTICE ASQUITH.—Monday, 13th February, at Newcastle ; Saturday, 25th February, at Durham ; Monday, 6th March, at York ; Monday, 13th March, at Leeds.

OXFORD CIRCUIT.—Mr. JUSTICE HAWKE and Mr. JUSTICE LEWIS.—Wednesday, 11th January, at Reading ; Tuesday, 17th January, at Oxford ; Monday, 23rd January, at Worcester ; Saturday, 28th January, at Gloucester ; Saturday, 4th February, at Monmouth ; Saturday, 11th February, at Hereford ; Thursday, 16th February, at Shrewsbury ; Thursday, 23rd February, at Stafford.

NORTHERN CIRCUIT.—Mr. JUSTICE OLIVER and Mr. JUSTICE CROOM-JOHNSON.—Saturday, 14th January, at Appleby ; Tuesday, 17th January, at Carlisle ; Monday, 23rd January, at Lancaster ; Monday, 30th January, at Liverpool ; Monday, 27th February, at Manchester.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 12th January 1939.

	Div. Months.	Middle Price 4 Jan. 1939.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	104½xd	3 16 7	3 13 1
Consols 2½%	JAJO	70	3 11 5	—
War Loan 3½% 1952 or after	JD	97⅜	3 11 7	—
Funding 4% Loan 1960-90	MN	107½	3 14 5	3 9 10
Funding 3% Loan 1959-69	AO	94½	3 3 6	3 5 10
Funding 2¾% Loan 1952-57	JD	92¼	2 19 7	3 6 6
Funding 2½% Loan 1956-61	AO	86½	2 17 10	3 7 7
Victory 4% Loan Av. life 21 years	MS	107	3 14 9	3 10 6
Conversion 5% Loan 1944–64	MN	109⅜	4 11 5	2 18 11
Conversion 3½% Loan 1961 or after	AO	98½	3 11 1	—
Conversion 3% Loan 1948-53	MS	98½	3 0 11	3 2 9
Conversion 2½% Loan 1944-49	AO	95½	2 12 6	3 1 2
National Defence Loan 3% 1954-58	JJ	95½	3 2 10	3 6 3
Local Loans 3% Stock 1912 or after	JAJO	83	3 12 3	—
Bank Stock	AO	328½	3 13 0	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	80½	3 8 4	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	85½	3 10 2	—
India 4½% 1950-55	MN	111	4 1 1	3 5 10
India 3½% 1931 or after	JAJO	89¾	3 18 0	—
India 3% 1948 or after	JAJO	75¾	3 19 2	—
Sudan 4½% 1939-73 Av. life 27 years	FA	103½xd	4 6 11	4 5 7
Sudan 4% 1974 Red. in part after 1950	MN	105½	3 15 10	3 8 8
Tanganyika 4% Guaranteed 1951-71	FA	104½xd	3 16 7	3 10 8
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	102½	4 7 10	3 12 2
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	88½xd	2 16 6	3 8 2
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	99½	4 0 5	4 0 7
Australia (Commonw'th) 3% 1955-58	AO	83½	3 11 10	4 4 9
*Canada 4% 1953-58	MS	109	3 13 5	3 4 7
*Natal 3% 1929-49	JJ	98	3 1 3	3 4 11
New South Wales 3½% 1930-50	JJ	92	3 16 1	4 8 9
New Zealand 3% 1945	AO	88	3 8 2	5 7 10
Nigeria 4% 1963	AO	107½	3 14 5	3 10 10
Queensland 3½% 1950-70	JJ	90½	3 17 4	4 0 11
*South Africa 3½% 1953-73	JD	100½	3 9 8	3 9 1
Victoria 3½% 1929-49	AO	93½	3 14 10	4 5 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	83	3 12 3	—
Croydon 3% 1940–60	AO	93	3 4 6	3 9 6
*Essex County 3½% 1952-72	JD	100	3 10 0	3 10 0
Leeds 3% 1927 or after	JJ	82	3 13 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	96½	3 12 6	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	68	3 13 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	81½	3 13 7	—
Manchester 3% 1941 or after	FA	82xd	3 13 2	—
Metropolitan Consd. 2½% 1920-49	MJSD	94½	2 12 11	3 1 11
Metropolitan Water Board 3% "A" 1963-2003	AO	84½	3 11 0	3 12 6
Do. do. 3% "B" 1934-2003	MS	85½	3 10 2	3 11 6
Do. do. 3% "E" 1953-73	JJ	93½	3 4 2	3 6 3
*Middlesex County Council 4% 1952-72	MN	106	3 15 6	3 9 0
* Do. do. 4½% 1950-70	MN	110	4 1 10	3 9 4
Nottingham 3% Irredeemable	MN	82	3 13 2	—
Sheffield Corp. 3½% 1968	JJ	100xd	3 10 0	3 10 0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	101¼xd	3 18 10	—
Gt. Western Rly. 4½% Debenture	JJ	108½xd	4 2 11	—
Gt. Western Rly. 5% Debenture	JJ	120½xd	4 3 0	—
Gt. Western Rly. 5% Rent Charge	FA	116½xd	4 5 10	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	109½	4 11 4	—
Gt. Western Rly. 5% Preference	MA	82½	6 1 3	—
Southern Rly. 4% Debenture	JJ	101½	3 18 10	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	105½	3 15 10	3 12 10
Southern Rly. 5% Guaranteed	MA	115½	4 6 7	—
Southern Rly. 5% Preference	MA	92½	5 8 1	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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